(25,351)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 521.

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LTD., PLAINTIFF IN ERROR AND APPELLANT,

vs.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS.

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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1 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila.

No. 4953.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff,
against
THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, and The Orden De Dominicos or Padres Predicadores, Otherwise Known as Provincia Del Santisimo Rosario De Filipinas, Defendants.

For Damages for Breach of Contract.

Complaint.

Now come the undersigned attorneys, and acting on behalf of the Government of the Philippine Islands, file a complaint against "The Philippine Sugar Estates Development Company, Limited" and its co-defendant, the Orden de Dominicos or Padres Predicadores, of these Islands, otherwise known as the Provincia del Santisimo Rosario de Filipinas, basing said complaint in the following cause of action.

1st. As a result of long and prolix negotiations and conferences held between D. Francisco Gutierrez, as representative of the defendant Company—which is a sociedad anonima organized
2 in accordance with and under the laws in force in the Philippine Islands, where it does business, having its residence therein—and the Civil Governor and Chief Executive of the Government of the said Philippine Islands, the Honorable William H. Taft, who represented that Government, the said defendant Company, about the end of the year 1903, agreed to sell, transfer and convey to the said Government of the Philippine Islands, for a stipulated price and under certain conditions for the ascertainment of the exact area of the estates, eight extensive pieces of rural property, of which the said Company was the owner with full and legal title thereto, situated in the Procince- of Laguna, Cavite, Bulacan, and Bataan, amongst which, and included in the property situated in the first named Province, was to be found the so called "Hacienda de Calamba" (Calamba Estate) the description of which shall be given further on.

2nd. The contents of that contract or agreement preliminary to the execution of the contract of sale, appeared in a document subscribed and signed on the twenty second day of December 1903 in the city of Manila, Philippine Islands, by the representatives of the Government of said Philippine Islands and those of "The Philippine

Sugar Estates Development Company Limited," at-ested by the Apostolic delegate, Monsignor Juan Bautista Guidi, Archbishop of Stauropoli and by the Honorable A. W. Fergusson, said document being executed in triplicate and two editions made of the same, one in English and the other in Spanish, a copy of each of the two editions of said preliminary contract being attached to this complaint and made part hereof, the English copy being marked
3 "Exhibit A" and the Spanish copy "Exhibit B."

3rd. According to the text of this preliminary contract, the defendant company undertook to sell and transfer to the Government the said Estates, among which was the Calamba estate, including in said sale the buildings, camarines, farm houses, warehouses, irrigation works, dams, tunnels, ditches, "and all improvements, together with all water and other rights and all hereditaments belonging to the company on every part of the estates agreed to be conveyed," excepting expressly and definitely certain parcels from the estates and some buildings concretely specified and enumerated, which, as regards the "Hacienda de Calamba," consisted in a house called "casa de Majalda," 800 hectares of tillable lands, one camarin and some building lots.

4th. On October 19th, 1905, the agent and representative, at that time, of "The Philippine Sugar Estates Development Company, Limited," carrying into effect and complying with the stipulations contained in the preliminary contract of December 22nd, 1903, and after some negotiations made to determine the area of the estates to which it referred, proceeded to execute in favor of the Government of the Philippine Islands the deed of sale of the Calamba Estate for the sum of One million three hundred eighty five thousand four hundred forty three pesos and twenty nine centavos (P1,385,443.29) before the notary public of this city Don Florencio Gonzalez Diez, the signatures being witnessed by Don Eusebio Orense and
4 Don Jose Varela Calderon, attorneys-at-law, said amount being paid by the representative of said Government to that of the vendor Company. A copy of said deed is attached to this complaint and made part thereof, marked "Exhibit C."

5th. In the description which is made of the Calamba Estate in the deed of sale, above referred to, after fixing the boundaries of the estate, the area thereof, the quality and condition of the land, the condition of the surface, the irrigation works existing thereon, the buildings which belong to said estate, etc., etc., it is expressly stated that, in several places thereof, there exist the hydraulic sugar mills called Mapagon and Calamias and the steam mills known as Mayapa, Sirauglupan, Real and Punta; fear being expressed, however, that they may have been destroyed by revolutionists; and in the body of said deed of sale, the vendor states that "there are included in this sale and are hereby ceded and conveyed to the Government of these Islands, all the rights of action which the vendor Company has or may legally exercise in the buildings, irrigation works, water rights, lots, and all other improvements and accessories which exist in the Hacienda," excluding, on the other hand, the parcels of land, building lots and lands which it was agreed to exclude from the sale in the

preliminary contract of December 22nd, 1903, above referred to, which was made an integrant part of the new deed.

6th. One of the parties to the deed of sale of October 19th, 1905, was the Order of Dominican Fathers or Padres Predicadores of these Islands, otherwise known as the Provincia del Santisimo Rosario de Filipinas, represented in the execution of said contract by the most Reverend Father Fr. Lucio Asencio y Pascual, Provincial vicar of said Order, who, in the name thereof, solemnly bound the same to guarantee each and all of the obligations contracted by virtue of said deed by the Philippine Sugar Estates Development Company, Limited, answering wholly and partially, jointly and severally with said Company for the prompt and full compliance with said obligations and for the damages which by the breach thereof might be suffered by the Government of the Philippine Islands.

7th. After the sale was completed, and on taking charge of the Calamba Estate, the Government of the Philippine Islands, learned with natural surprise, that on several occasions from the date of the preliminary agreement, December 22nd, 1903, up to that on which the deed of sale of October 19th, 1905, was executed, and for some time after the execution thereof, but always prior to the taking of possession by the Government of said Calamba Estate, The Philippine Sugar Estates Development Company, Limited, through its attorneys-in-fact, agents and employees who acted under its orders, proceeded to raise, take apart and remove from the places wherein they were erected, the six sugar mills mentioned in the deed of sale and called Mapagon, Calamias, Mayapa, Sirauglupan, Real and Punta, with the machinery, appliances, implements and accessories of said mills, all of which were in good repair, removing them to a Camarin belonging to the vendor Company situated in the town of Calamba, and taking them later to other places unknown to this plaintiff, all of which was done with the fully realized purpose of ap-ropriating to itself all the property referred to, without authority or even knowledge of the Government of the Philippine Islands.

8th. There was also on the land of the Calamba Estate a railroad composed of rails, ties and other materials and accessories pertaining thereto, which about the same time when the mills referred to in the above paragraph were removed, was also, without the permission or knowledge of the Government of the Philippine Islands, raised, taken apart and removed by the same persons who represented the vendor Company and acted under its orders, with the same purpose and destination as that stated in the preceding paragraph.

9th. Both the mills, as well as the railroad, to which reference has just been made, were not only attached in a fixed and permanent manner to the lands and Camarines of the "Hacienda de Calamba," sold to the Government by the defendant Company, but, they had been placed there with the purpose of using them for the cultivation and development of said lands, for which reason they were erected in the said Camarines, having been devoted to said purpose up to the date when the removal took place.

10th. The value of said mills, with their accessories and appurtenances as well as that of the railroad referred to, as they were erected and laid, and before they were removed by the Philippine Sugar Estates Development Company, Limited, was Fifty thousand pesos (50,000.00).

7 11th. The Government of the Philippine Islands, through its representatives, has demanded from the vendor Company the reimbursement for the mills, railroad, and other fixed material to which this complaint refers, said Company having answered in the negative, on account of having sold beforehand the property claimed.

12th. By virtue of what is stated heretofore, we ask the court to decide this case, sentencing the defendant Company and its co-defendant the Dominican Order or Padres Predicadores of these Islands, otherwise known as Provincia del Santisimo Rosario de Filipinas jointly and severally to pay to the Government of the Philippine Islands the sum of Fifty thousand pesos with the legal interest which the same may earn from the date of the filing of this complaint and the cost of the present litigation, granting also to the plaintiff whatever other remedy may be just.

Manila, October 13th, 1903.

(Signed) DEL PAN, ORTIGAS AND FISHER,
Attorneys for the Government.

A.

MANILA, P. I., December 22, 1903.

The Philippine Sugar Estates Development Company, Limited, purporting to be a corporation of the Philippine Islands, duly and lawfully organized, hereby agrees to sell and convey to the Government of the Philippine Islands, eight (8) haciendas, formerly the property of the Dominican Order in the Philippines, as follows:

8 (1) The hacienda of Biñan, in the province of Laguna, said to contain, by the survey of Villegas, a surveyor, 3,739 hectares, 10 ares and 15 cent-ares.

(2) The hacienda of Calamba, in the province of Laguna said to contain 16,424 hectares and 14 ares;

(3) The hacienda of Lolomboy, in the province of Bulacan, divided into three parts—the first and second parts at Polo, one containing 106 hectares and 53 ares, and the other containing 65 hectares, 19 ares and 50 cent-ares, and the third part in the pueblo of Bocaue, containing 4,158 hectares, 9 ares and 66 cent-ares;

(4) The hacienda of Naic, in the province of Cavite, said to contain 7,922 hectares and 29 ares;

(5) The hacienda of Orion, in the province of Bataan said to contain 2,109 hectares, 57 ares and 24 cent-ares.

(6) The hacienda of Santa Cruz de Malabon, in the province of Cavite, said to contain 8,902 hectares, 37 ares and 50 cent-ares;

(7) The hacienda of Santa Maria de Pandi, in the province of Bulacan, said to contain 12,069 hectares, 57 ares and 2 cent-ares;

(8) The hacienda of Santa Rosa, in the province of Laguna, said to contain 4,750 hectares, 14 ares and 24 cent-ares; and in addition a parcel of land in Toro, in the province of Bulacan, said to contain 58 hectares, 2 ares and 30 cent-ares, which is really part of either the Hacienda of Lolomboy or that of Santa Maria de Pandi.

Reserving therefrom the casa hacienda and camarine in the hacienda and pueblo of Santa Rosa, in the province of Laguna, including the land enclosed within the walls surrounding said casa and camarine and two hundred hectares of first class agricultural land therein to be selected by the agent of the Philippine Sugar Estates Development Company, Limited, in reasonably compact form
9 near the casa hacienda, and selected so as to interfere with the use of the rest of the estate by the Philippine Government as little as possible and so as not to include any part of the poblacion but only agricultural land; reserving also the casa Majala on the mountain side of the Calamba estate, together with eight hundred hectares of cultivated sugar lands extending from the casa Majala toward the town of Calamba, to be selected by the Company's agent in as near a compact tract as practicable and so as not to interfere with the use of the remainder of the estate by the Philippine Government. The reservation of neither of these tracts is to include the source of water supply for the estate from which reserved, and is not to be used by the Philippine Sugar Estates Development Company, Limited, or any successor in title to the prejudice of the Government of the Philippine Islands or any successor in title to the lands hereby conveyed so far as the use of water thereon and the present system of irrigation is concerned, which shall be continued for the benefit of both parties herein in accordance with the law and customs of the Philippines in the year 1898.

This sale and conveyance shall include all the dwelling houses, farm houses, warehouses, camarines and other buildings, irrigation works, dams, tunnels, ditches, and all other improvements, together with all water and other rights and all hereditaments belonging to the Company on every part of the estates hereby agreed to be conveyed, except the two houses expressly reserved above, and also excepting a camarine in the poblacion of Orion in the province of Bataan, and a camarine in the poblacion of Calamba which belonged to the Philippine Sugar Estates Development Company, Lim-
10 ited but were not valued by Villegas, the Surveyor, in the survey hereinafter referred to, from ignorance that they belonged to the Company. The land upon which the camarines of Orion and Calamba stand is not included in this conveyance: It is understood that the Philippine Sugar Estates Development Company, Limited, has sold upwards of four hundred hectares of sugar land in the Calamba estate which is to be included in the eight hundred hectares herein reserved to the Company and to be satisfied out of the same. It is also understood that the Company has sold ten hectares, more or less, with a rice mill thereon in Biñan, and town lots in Biñan, Calamba and Santa Cruz. To make up for this

amount and for the two lots in Orion and Calamba upon which stand the Camarines mentioned above, the said Company agrees to reduce the reservation of two hundred hectares in Santa Rosa by the amount thus sold in Biñan, Calamba and Santa Cruz, and by the amount retained in Orion and Calamba.

The Philippine Sugar Estates Development Company, Limited, agrees that it has good and merchantable titles to all the lands and buildings hereby conveyed, duly registered according to the laws of the Philippine Islands, that it will produce evidence of the same for examination by counsel for the Philippine Government as soon as practicable after the signing of this contract, and that it will convey such lands and buildings absolutely and in fee simple in accordance with this contract by a good and sufficient deed of general warranty of title to the Philippine Government. The Philippine Sugar Estates Development Company, Limited, further agrees to
11 furnish to the Philippine Government all its books, papers and other documents which it has, either in possession or under its control, bearing upon its ownership, or the ownership of its predecessors in title, of the lands herein agreed to be conveyed which shall, in the opinion of the counsel for the Philippine Government, be useful to such Government in determining who are the rightful tenants on the property, and in showing, in cases of litigation, the lawful and peaceable possession of the Philippine Sugar Estates Development Company, Limited, or its predecessors in title, and especially in showing the lawful and peaceable possession of the Dominican Order of the Philippines during the sovereignty of Spain. The Philippine Sugar Estates Development Company, Limited, further agrees to aid the Philippine Government in every way by procuring oral or documentary evidence needed in confirming the title hereby conveyed, or by showing where such evidence can be procured. The Philippine Sugar Estates Development Company, Limited, further agrees that the Philippine Government may at its own expense make such surveys of any of the haciendas as it sees fit in order to determine whether the superficial area of any hacienda according to the description thereof in the title deeds is the same as that stated in the above mentioned list of haciendas and parcels.

The Philippine Sugar Estates Development Company, Limited, also hereby agrees to assign and transfer to the Government of the Philippine Islands all claims for rents for use of land or
12 buildings herein agreed to be conveyed due to the Philippine Sugar Estates Development Company, Limited, or its predecessors in title, from tenants thereof which are now uncollected, together with all claims for rents accruing between the date hereof and the consum-ation of the sale herein agreed to be made, except such rents as may be owing by the United States Government to the said Company for occupation of its houses by the United States troops.

It is understood that this contract is based upon a series of surveys made by a surveyor named Juan Villegas during the years 1901 and 1902 at the instance of the Government of the Philippine Islands, in which he classified and appraised the lands of the Philippine Sugar Estates Development Company, Limited, herein agreed to be

conveyed; that on the basis of this survey, classification and appraisement, the Civil Governor, on behalf of the Government of the Philippine Islands, by letter to Monsignor Jean Baptist Guidi, Archbishop of Stauropoli and Apostolic Delegate to the Philippine Islands, dated July 5th 1903, made an offer to purchase the lands above described at the price fixed by Villegas in Mexican currency reduced to Gold at the ratio of two to one, and this letter of the Civil Governor, together with the list of the estates of the Dominicans, so called, which accompanied the letter and the surveys of Villegas of said estates, is hereby, for the better understanding of this contract, made part hereof as an exhibit by reference—it being understood that the estate of San Juan Del Monte, mentioned in the list as belonging to the Dominicans, was never conveyed to the Philip-
13 pine Sugar Estates Development Company, Limited, and is not owned by the said Company and is not included in this agreement to sell.

In Consideration of the sale and conveyance of the lands and buildings and the assignment of the claims for rent, all as above described, the Government of the Philippine Islands agrees to pay the Philippine Sugar Estate Development Company, Limited, the sum of three million six hundred seventy-one thousand, six hundred and fifty seven dollars ($3,671,657.00) in money of the United States subject to this proviso: That if the Government of the Philippine Islands shall notify the Philippine Sugar Estates Development Company, Limited, that the area of any hacienda that is described in the title deed thereof falls short of the superficial area thereof as shown by Villegas' survey of the same, then the parties hereto shall cause a joint survey of the same to be made by an agent of each; and if the true survey shall show the area of the hacienda to be less than that as stated by Villegas in the list hereinbefore set forth, then the price herein agreed to be paid shall be abated by an amount to be ascertained by multiplying the number of hectares short into the average value of a hectare in the hacienda in question as shown by dividing Villegas' total valuation of such hacienda by the total number of hectares contained therein according to his survey, plus twenty-five per cent, thereof; and if, on the other hand the true survey shall show an excess of hectares over the amount reported by Villegas, then the price to be paid shall be increased by an amount ascertained in a similar manner.

14 In addition to the foregoing consideration the Philippine Government also stipulates that the Philippine Sugar Estates Development Company, Limited, shall be acquitted to the obligation to pay all the uncollected land taxes on the lands, buildings and other improvements herein agreed to be conveyed to the Philippine Government which are due to the provinces or the municipalities in which the same are respectively situated.

It is understood that the Government of the Philippine Islands, in order to pay the purchase price hereof, is obliged to sell its bonds under and by virtue of the authority of Section 64 of the Act of Congress of the United States, approved July 1, 1902, entitled "An

act temporarily to provide for the administration of the affairs of Civil Government in the Philippine Islands, and for other purposes."

The Government of the Philippine Islands agrees to make every effort to sell the bonds and obtain the proceeds as soon as is practicable, and the time for the consum-ation of this contract by the conveyance of a good and marketable title by the Philippine Sugar Estates Development Company, Limited, and the payment of the purchase price by the Government of the Philippine Islands is fixed as of the end of the period within which such bond may be engraved, advertised, sold and the proceeds thereof realised, and the necessary survey and necessary investigation of the title be made by prompt action of the Philippine Government, not exceeding six months from the date of this contract.

In Witness Whereof, the two parties of this agreement here-
15 unto affix their signatures, the Philippine Sugar Estates Development Company, Limited, acting by Francisco Gutierrez, the attorney-in-fact of said Company, as shown by the attached power of attorney, and the Government of the Philippine Islands by Wm. H. Taft, Civil Governor, whose authority is shown by a certified copy of a resolution of the Philippine Commission also hereto attached.

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED,

(Signed) By FRANCISCO GUTIERREZ,
Attorney-in-Fact.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

(Signed) By WM. H. TAFT, *Civil Governor.*

In the presence of:

(Signed) JOHN BAPTISTE GUIDI,
Archbishop of Stauropoli,
Apostolic Delegate.

(Signed) A. W. FERGUSSON.

Exhibit B is omitted being the same as Exhibit A which is in English.

C.

Deed of Sale of the Hacienda de Calamba.

I, Don Eduardo Gutierrez Répide, of legal age, married, resident of this City of Manila, Philippine Islands, by profession a lawyer, as General Manager and special attorney in fact, for the purposes of this deed, of the mercantile corporation (compañia mercantil anonima) "The Philippine Sugar Estates Development Company, Limited, a corporation duly organized, registered and
16 domiciled in *in* said City of Manila, by virtue of the full and sufficient powers vested in me for the execution of these presents by the said corporation, as appears from letters of attorney

executed on the 19th of October, 1905, before Don Francisco de P. Rodoreda, a notary public in and for the City of Manila, and by virtue of the authority also vested in me by resolution of the General Meeting of stockholders of the said corporation held on the 18th of October, 1905, and in consideration of the sum of One Million Three Hundred Eighty-five Thousand Four Hundred Forty Three Pesos and Twenty-nine Centavos Philippine Currency (1,385.443.29) to me in hand paid as representative of the said corporation, by the Honorable Luke E. Wright, Governor General of the Philippine Islands, for and in behalf of the Government of said Islands, I do, by these presents, sell, bargain and convey, in fee simple, to the said Government of the Philippine Islands, for and in behalf of the corporation by me represented, an agricultural property owned by the aforesaid corporation, styled Hacienda de Calambas, or San Juan Bautista de Calamba, situated in the municipality of Calamba, province of La Laguna, Philippine Islands, the description, area and boundaries whereof, as they appear in the title deeds of the hacienda, are as follows:

Hacienda styled de San Juan Bautista or de Calamba, situated in the district of the pueblo of Calamba, which is included in its area, in the province and judicial district of La Laguna. Boundad on the North by the boundary line between said pueblo and that of Cabuyao; on the South by the district of the pueblo of Los Baños; on the East by the Laguna de Bay, including the islet named Pulo-Calamba; and on the West by the district of the
17 pueblos of Tanauan and Santo Tomas, of the Province of Batangas. It measures an area of sixteen thousand four hundred and fourteen hectares. At the present time about one-half of its land is uncultivated, said half abounding in timber suitable for building, firewood, limestone deposits, quarries and pasture lands; the other half, or rather two-fifths of the hacienda, with the exception of a small part given over to town lots in the town and barrios of Calamba, is dedicated to the cultivation of rice by irrigation of which it yields at least two crops of sugar-cane and of up-land rice. Within its area and at the plaza of the town are situated the plantation house, built of stone with tile roof, and two stone warehouses independent of the principal building, stone stables, two courtyards, an orchard and zacate grounds entirely surrounded by a wall, partly of masonry and partly of wooden palings on a masonry foundation. Bounded in front by the plaza of the pueblo, in the rear by calle Nueva that is to say, the street that passes behind the church and convent, on the right by a large lot which forms the corner of the said calle Nueva and two other lots which following the line of the former run down to the street on the shore, on the left by the churchyard, the right wall of the church and the courtyard wall of the convent. Besides, all of the town lots of the pueblo of Los Baños, including the new market lot, it owns the houses and storehouses formerly inhabited and occupied by the Spaniards Don Jose Ibarra, Don Silvestre Barranquero, Don Jose Alvarez Navia and other town houses of the persons evicted in the years ninety, ninety-one and ninety-

two, which were awarded to the Order as a result of judicial proceedings. In the barrio of Majada it owns the plantation house of this name, a new building of strong materials surrounded by a large stone fence and in the neighborhood several coffee plants, and at different places the sugar mills with all outbuildings and accessories named "Mapagon," a hydraulic mill, "Mayapa," a steam mill, "Calamias," a hydraulic mill, "Sirauglupa," a steam mill, "Real," a steam mill and "Punta," also a steam mill; though it is believed that these mills were destroyed in part at least, by the revolutionists. It has two large dams for the irrigation of paddy lands, named San Juan and Campana dams, also one conduit and several irrigation canals and works reaching to the pueblo; specially the iron pipe conduit passing under the San Cristobal River, in the barrio of Calamias, which irrigates the Bantio and San Cristobal lands.

I likewise record that according to the survey and measurement of the said property recently made by the engineers and surveyors of the Philippine Government the exact description thereof is as follows, to wit:

Beginning at an old monument on the southerly side of the Los Baños-Calamba road at the southeast corner of the estate;
18 thence S. 53° 44′ W., a distance of 15760.00 ft. (3878.4 M.) to a large rock, marked with a hole in the center, at the beginning of a dry estero thence in a general westerly direction, passing under the Santo Tomas-Calamba Road, along said estero in its meanderings as a part of the southerly boundary, a distance of 14700 ft. (4480.6 M.), more or less, to its junction with the San Juan river, thence N. 78° 15′ W., a distance of 500 ft. (152.4 M.), more or less, to an old monument; thence N. 73° 8′ W., a distance of 4280.3 ft. (1304.6 M.) to an old monument; thence N. 71° 50′ W., a distance of 7106.0 ft. (2165.9 M.) to an old monument; thence S. 87° 13′ W., a distance of 5660.6 ft. (1725.4 M.) to an old monument; thence S. 84° 10′ W., a distance of 9519.4 ft. (2901.5 M.) to an old monument; thence S. 71° 20′ W., a distance of 11978.9 ft. (3651.5 M.) to an old stone monument on the top of Mt. Gonzalez; thence N. 18° 3′ E., a distance of 4007.5 ft. (1221.5 M.) to a rock marked with a cross at the beginning of the Magamit or San Cristobal river; thence in a northerly and easterly direction along the center line of said river in its meanderings as the natural westerly and northerly boundaries, a distance of 65400 ft. (19933.9 M.), more or less, to an old monument; thence in a general northeasterly direction along a line partly of bamboo and brush, partly of an old ditch, and partly of bamboo and bushes (also marked by seven old monuments at irregular distances apart), a distance of 15000 ft. (4572.0 M.) more or less, to an old monument on the shore of Laguna Bay at the northeast corner of the estate; thence in a general southerly direction at mean low water along the shore of said Laguna de Bay in its meanderings as the natural easterly boundary, a distance of 3′300 ft. (11673.8 M.) more or less, to an old monument upon the shore of said Laguna de Bay; thence S. 18° 58′ W., a distance of 706.7 ft. (215.4 M.) to an old monument; thence S. 20° 36′ W., crossing a small lake, the shore of said lake being marked by a

new monument a distance of 3077.5 ft. (938.0 M.) to an old monument; thence S. 10° 8′ W., a distance of 1965.4 ft. (599.1 M.) to an old monument on the southerly side of the Los Baños-Calamba road, the place of beginning—said estate containing an area of 13673 hectares, or 33786 acres, be the same more or less.

(Courses are true meridian.)

I also record that in this conveyance to the Government of the Philippine Islands, which is subrogated thereto, are included all the rights and actions which the said Corporation by me represented has now, or may legally have, in and to all buildings and irrigation works, together with all water rights, town lots and other improvements and hereditaments existing in and on the hacienda by these presents sold, bargained and conveyed; and I likewise subrogate to the Government of the Philippine Islands all rights and actions which the said corporation by me represented has now or may exercise for the recovery of rents now due and unpaid by the occupants of the said hacienda and to all standing crops of every description existing thereon with the exception of rents which may be owing by the Government of the United States to the vendor corporation by reason of the occupancy by the United States Army of buildings belonging to the aforesaid corporation.

I likewise record that I hereby bind the corporation by me represented to deliver to the Government of the Philippine Islands, at the earliest possible date, all title, deeds and muniments of title of the hacienda by these presents sold, together with all the maps, leases, lists of lessees, and all other books and documents, without exception, which the said corporation has in its possession or control, and which can or might in any degree be of service to the said Government, to show lawful ownership and peaceable possession by the said corporation and its predecessors of the property sold, bargained and conveyed by these presents, and I furthermore bind the said corporation to aid and assist the Government of the Philippine Islands in any and all investigations which may be found necessary to ascertain and prove said ownership and possession, specially in all proceedings which may be undertaken for the purpose of securing a perfect title to this property in the new Land Registration Office and clearly to establish what persons have been the lessees thereof.

I likewise record that there are expressly excluded from this sale and conveyance the parcels of lands, town lots and buildings, as referred to in the preliminary contract entered into on December 22, 1903, by and between the Honorable Wm. H. Taft, Civil Governor of the Philippine Islands, as representative of the said Government, and the then representative of the Philippine Sugar Estates Development Company, Limited, Don Francisco Gutierrez, which contract is made a part hereof for all legal purposes. In order to define and mark off beyond any doubt the location extent and boundaries of this excluded portion, the Philippine Sugar Estates Development Company, Limited, will, within six months from the date of the signing of this contract, designate a surveyor who, jointly with a surveyor named within the same time by the Government of the

Philippine Islands, shall repair to the hacienda herein referred to and shall thereupon establish the exact portion excluded from this sale, according to the stipulations of the said preliminary contract, and shall make technical plans in accordance therewith. In case both engineers or surveyors shall not agree upon any of the points submitted to them they shall by common accord appoint a third who shall finally determine the disputed point or points, always in accordance with the stipulations set forth in said preliminary
21 contract of December 22, 1903. After the property excluded from this sale and conveyance has been determined and described the Government of the Philippine Islands shall execute a proper instrument in favor of the vendor corporation setting forth the portion excluded, the drawing up of said instrument to be at the expense of the said vendor corporation, the Philippine Sugar Estates Development Company, Limited.

Finally, I record that it is hereby covenanted and agreed that the Government of the Philippine Islands, is, from the present moment, the owner, in fee simple, of the hacienda or agricultural property referred to in this contract, free from all charge and encumbrance, and that I obligate the corporation by me represented to warrant and defend the said Government of the Philippine Islands, now and forever, against any and all claims whatsoever presented against said property, including all adverse claims to the title and registration of the hacienda in the new Land Registration Office, and for this purpose it shall be understood that this warranty of title shall extend not only to cases expressly covered by existing law but also in the event that the Government of the Philippine Islands should fail in its attempt to register in the manner stated the property by these presents sold and conveyed; and with respect to any charges or encumbrances which may be found to exist upon the property sold at any date prior to the execution of these presents, the corporation by me represented is hereby made responsible therefor and binds itself to pay and cancel same or to indemnify the purchaser in case it does not do so.

22 In turn I, the Very Reverend Father Fray Lucio Asenci y Pascual, as Provincial Vicar of the Dominican Order of Order of Preachers of these Islands, that is to say, the Province of the Most Holy Rosary of the Philippines, and as the head of the convent of Saint Dominic of Manila, by virtue of the powers and authority vested in me in accordance with a substitution of a power of attorney to me executed on the 8th of July, 1901, by the Very Reverend Father Provincial Fray Santiago Paya, do become party to the execution of this instrument and solemnly bind the religious corporation by me duly and fully represented, to respond as surety for the performance of each and all of the obligations contracted in these presents by the corporation, "The Philippine Sugar Estates Development Company, Limited," responding severally and jointly with the said corporation for the prompt and complete performance of said obligations and for the payment of damages arising to the Government of the Philippine Islands through breach of same and jointly with the vendor to warrant the title of the said Govern-

ment of the Philippine Islands or of its successors in interest to the property by these presents conveyed.

In Witness Whereof we do freely and voluntarily sign these presents in the presence of the undersigned witnesses to this indenture, all of us, before Señor Don Florencio Gonzalez Diez, a notary public in and for this Capital.

Manila, October nineteen, nineteen hundred and five.

(Signed) FRAY LUCIO ASENICO,
Provincial Vicar,

23 For THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED.

(Signed) EDUARDO GUTIERREZ REPIDE,
General Manager, Holding Special Power of Attorney.

Witnesses:

(Signed) EUSEBIO ORENSE.
(Signed) JOSE V. VARELA Y CALDERON.

UNITED STATES OF AMERICA,
Philippine Islands:

In the City of Manila, Philippine Islands, on the nineteenth day of October, nineteen hundred and five, that is to say, on the date of the execution of this indenture personally appeared the persons executing same, known to me to be the same persons who executed the foregoing instrument, and signed same in the representation by each one of them held, and acknowledged that the same is their free act and deed, done in the name and representation of the principals by them represented.

Señor Don Eduardo Gutierrez Repidé exhibited his certificate of registration numbered 157,563, issued in this City of Manila on the 29th of April of the current year; and the Very Reverend Father Fray Lucio Asencio y Pascual did not exhibit said certificate of registration for the reason that he is exempt on account of age from the obligation of providing himself with same.

In witness whereof I have hereunto affixed my signature on the date above mentioned.

(Signed) FLORENCIO GONZALES DIEZ,
Notary Public.

My commission expires on December 31, 1906.

[NOTARIAL SEAL.]

[Seal of the Philippine Sugar Estates Development Company, Limited.]

UNITED STATES OF AMERICA,
Philippine Islands, Manila:

Court of First Instance.

No. 4953.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff,
versus
THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, Defendant.

Summons.

The Philippine Sugar Estates Development Company, Limited, and the Orden de Dominicos or Padres Predicadores of these Islands, otherwise known as Provincia del Santisimo Rosario:

You are hereby required to enter your appearance in the Office of the Clerk of the Court of First Instance of the City of Manila within twenty (20) days after the service of this summons upon you, exclusive of the day of such service if it is served on you in the City of Manila, otherwise within forty (40) days, and to answer the complaint of said plaintiff which is hereto attached and herewith served upon you, within the time fixed by the rules of this Court. If you fail to appear within the time aforesaid the plaintiff will take judgment against you by default and demand from said Court the relief applied for in said complaint.

Witness the Honorable Manuel Araullo, Judge of this Court of First Instance this 15th day of October, 1906.

(Signed) J. McMICKING,
Clerk of the Court of First Instance of Manila.

Sheriff's Return.

UNITED STATES OF AMERICA,
Philippine Islands:

On this date I have served a copy of the within summons, and of the complaint attached, upon Philippine Sugar Estates Development Company, Limited, having left the document in the hands of Jose Maria Gutierrez, manager of said Company; and to the Dominican Order by leaving the documents in the hands of the Procurador General of said Corporation in Manila, personally to each of them.

Done at Manila, P. I., this 16th day of October, 1906.

(Signed) JAMES J. PETERSON,
Sheriff of Manila,
By J. ANTONIO DE LA CRUZ,
Deputy Sheriff.

(Stamped:) Sheriff's fees P32.24. Paid by the plaintiff, 14,000 words excess each.

(Title of the Case Omitted.)

To the Clerk of the Court:

Please enter our appearance as the attorneys for the defendants in the above entitled case.

26 Manila, November 2, 1906.

(Signed) HARTIGAN, RHODE AND GUTIERREZ.

(Stamped:) Filed on the 2nd of November, 1906, at 2-5 p. m. (Signed) J. McMicking, Clerk.

(Title of the Case Omitted.)

Demurrer.

Now come the defendants through the undersigned attorneys and file a demurrer against the complaint filed in this record, on the following grounds:

I.

That the complaint does not state facts sufficient to constitute a cause of action.

II.

That the complaint is ambiguous, unintelligible and vague.

Wherefore we ask the court to sustain the above demurrer.

Manila, November 8, 1906.

(Signed) HARTIGAN, RHODE AND GUTIERREZ,
Attorneys for the Defendants.

Received copy.

(Signed) DEL PAN, ORTIGAS AND FISHER.

(Stamped:) Filed on the 9th of November, 1906 at 10.30 a. m. (Signed) J. McMicking, Clerk.

27 (Title of the Case Omitted.)

(Stamped:) Court of First Instance, Manila, Philippine Islands, November 9, 1906, 3-15 p. m. Clerk's Office.

Notice.

To Messrs. Hartigan, Rohde and Gutierrez, Greeting:

We hereby have the pleasure to notify you that on Saturday next the 17th instant at 8 a. m., or as soon thereafter as is practicable, we shall ask the Honorable Judge who presides the part wherein the above entitled civil case is being conducted, to hear and decide the de-

murrer filed by you on the 8th instant, of which we have just received the copy.

Manila, November 9, 1906.

(Signed) DEL PAN, ORTIGAS AND FISHER,
Attorneys for the Plaintiff.

Received copy.

(Signed) HARTIGAN, ROHDE AND GUTIERREZ,
Attorneys for the Defendant.

(Title of the Case Omitted.)

Decision of Demurrer.

The demurrer filed to the complaint by the attorneys for the defendants has been called for hearing.

28 After having heard the arguments of the attorneys for the respective parties, and taking into consideration that said complaint is not ambiguous, unintelligible or vague; and it appearing that by all the statements made therein taken together with the contents of the documents, copies of which have been attached to the complaint marked "B" and "C" and dated respectively December 22, 1903, and October 19, 1905, the facts alleged in the said complaint are sufficient to constitute a cause of action.

The demurrer is overruled and defendants are given five days to answer.

Manila, December 7, 1906.

(Signed) MANUEL ARAULLO, *Judge.*

To-day December 8, 1906, a letter was sent to the plaintiff notifying it the above decision.

(Signed) PEDRO DE TORRES.

(Title of the Case Omitted.)

To Messrs. Hartigan, Rohde and Gutierrez, Attorneys for the defendants, Greeting:

You are hereby notified that on December 7, 1906, a demurrer filed by you in the above entitled case was overruled and the Court has ordered the defendant to answer to the complaint within five days from receipt of this notice.

29 Manila, P. I., December 8, 1906.

(Signed) DEL PAN, ORTIGAS AND FISHER,
By EUSEBIO ORENSE,
Attorneys for the Plaintiff.

This notice has been accepted this 8th day of December, 1906.

(Signed) HARTIGAN, ROHDE AND GUTIERREZ,
Attorneys for the Defendants.

(Stamped:) Filed on the 8th of December, 1906, at 11.20 a. m.
(Signed) J. McMicking, Clerk.

(Title of the Case Omitted.)

Answer.

Now come the defendants through the undersigned attorneys and answering to the complaint allege.

I.

That they admit paragraphs 1st, 2nd, 3rd, 4th and 6th of the complaint and deny generally and especially all the other facts alleged in the same.

Wherefore,

They ask the Court to render judgment acquitting the defendants from the complaint filed against them with costs against the plaintiff.

Manila, December 10, 1906.

(Signed) HARTIGAN, ROHDE AND GUTIERREZ,
Attorneys for the Defendants.

30 Received copy.
(Signed) DEL PAN, ORTIGAS & FISHER,
By E. ORENSE.

(Stamped:) Filed on the 11th December, 1906, at 10 a. m. (Signed) J. McMicking, Clerk.

(Title of the Case Omitted.)

The Attorney General, on behalf of the Insular Government comes before this Court and states:—

That Messrs. Del Pan, Ortigas and Fisher, having ceased to be the attorneys for the Government in the above entitled case and the Attorney General taking charge henceforward, the undersigned files his appearance in the said case and asks this court that all process and notices to be issued in the future be addressed to him.

Manila, June 27, 1907.

(Signed) GREGORIO ARANETA,
Attorney General, Attorney for the Government.

We consent:
(Signed) DEL PAN, ORTIGAS AND FISHER.

(Stamped:) Filed on the 27th June, 1907, at 3.30 p. m. (Signed) J. McMicking, Clerk.

31 On September 16, 1907, by mutual agreement, the hearing of the case was suspended and transferred to the next term of Court.

On February 11, 1908, the parties in the case agreed to postpone the hearing of the same to any time after March 15, 1908.

On February 20, 1908, the Court consented to the suspension of the hearing as applied for by the parties in the case.

On July 18, 1908, the parties in the case filed a further stipulation agreeing to postpone the hearing to any date after August 15, 1908.

(Title of the Case Omitted.)

Now come the defendants through the undersigned attorney and amending the answer filed in this record, allege:

That they admit paragraphs I, II, III, IV and VI of the complaint, and deny generally and specifically all the other facts contained in the same.

As a special defense, the defendants allege:

I.

That prior to signing the preliminary agreement of sale made by the "Philippine Sugar Estates Development Company, Limited," of its property in favor of the Insular Government, the said Com-
32 pany, had conveyed and sold to Don Enrique Rueda a railroad built on the Calamba Estate as well as the Sugar Mills existing therein, called Mapagón, Calamias, Mayayapa, Siranglupan, Real and Punta which were torn down and almost destroyed by the revolutionists, the supposed value whereof, is claimed in the present case.

II.

That this sale made by the Philippine Sugar Estates Development Company, Limited, in the month of October, 1903, in favor of Sr. Rueda was made known to the Insular Government before the preliminary agreement of December 22, 1903, was signed, for which reason the words "railroad and sugar mills" were not inserted in said agreement as being included in the sale.

III.

That when the final deed of sale of the Calamba estate to the Government was being drafted, the attorneys for the Government attempted to insert in it the words "sugar mills," to which the representative of the Philippine Sugar Estates Development Company, Limited, objected, stating that the Government had knowledge that they could not be included in the sale because they did not belong to the defendant Company any longer.

IV.

That for this reason the Government confined itself to demand that in the body of the final deed of sale it should be specified that "there are included in this sale and are hereby ceded and
33 conveyed to the Government of these Islands, all the rights

and actions which the Company which I represent has or may legally exercise in the buildings, irrigation works, water rights, lots and all other improvements and accessories which exist in the Haciendas or lands sold and conveyed by this instrument and likewise I subrogate the Government in all the rights and actions which the Company which I represent, has and may still legally exercise on the rents due and unpaid by the occupants of the same Estate" without inserting the words ingenios or sugar mills, over which the Company had no right.

V.

Wherefore, the said sugar mills and railroad which are the subject matter of this litigation, not having been included in the sale of the Calamba Estate to the Insular Government,

We ask this Honorable Court to render judgment acquitting the defendants and sentencing the plaintiff to pay the costs.

Manila, January 29, 1909.

(Signed) EDUARDO GUTIERREZ,
Attorney for the Defendants.

Received a copy this 9th day of January, 1909.

(Signed) R. D. BLANCHARD,
Ass't Attorney General.

(Title of the Case Omitted.)

Now comes the above named plaintiff by Ignacio Villamor, Attorney General of the Philippine Islands, its attorney, and
34 demurrs to the special defense set forth in the defendants' amended answer in said action for the reason that the said special defense does not state facts sufficient to constitute a defense.

The said special defense alleges that prior to the execution of the contract of sale between the parties hereto, the execution of which is admitted by the answer of the defendants, there was an oral agreement or understanding, whereby the sugar mills in question were reserved from such contract, and that the oral contract between the parties provided that the said sugar mills should be reserved from the provisions of such sale, and that by mistake the same was included in the written deed of sale.

This, in effect, is an attempt to vary the terms of a written instrument by oral evidence of a previous verbal understanding and is inadmissible under the law.

Dated this 1st day of February, 1900.

(Signed) IGNACIO VILLAMOR,
Attorney General.

Received copy this 1st day of February, 1909.

(Signed) EDUARDO GUTIERREZ,
By ALEJANDRO SAENZ.

On February 2, 1909, the Attorney General filed a brief in support of the above demurrer to the special defense. This brief, both in Spanish and English, covers folios 46 to 55, both inclusive of the original record.

35 (Title of the Case Omitted.)

The defendants having filed in this case on the 30th of last month, an amended answer setting forth in the same a special defense, a demurrer has been filed to said special defense by the attorney for the plaintiff.

Inasmuch as the special defense set forth in said amended answer tends to impugn or alter the contents of the deed of sale executed by the parties, on which the complaint filed in this action is based, by parol evidence of an oral agreement between said parties prior to or coetaneous to the execution of the said deed of sale, it is clear that the facts alleged in said special defense are not sufficient to constitute a defense.

The demurrer filed against said special defense alleged in the amended answer of the defendants is therefore sustained.

Manila, February 6, 1909.

(Signed) M. ARAULLO, *Judge.*

To-day February 6, 1909, the parties were notified of the above decision.

(Signed) F. CANILLAS.

The case having been set for hearing and witnesses having been summoned for February 11, 1909, the defendants filed the following amended answer on February 11, 1909.

36 (Title of the Case Omitted.)

(Stamped:) Court of First Instance, Manila, P. I., February 11, 1909. Clerk's Office.

Now come the defendants through the undersigned attorney and amending the answer filed in this case allege:

That they deny generally and specifically each and every one of the facts alleged in the complaint.

As a special defense, the defendants allege:

I.

That prior to the signing of the preliminary agreement as well as to the signing of the final deed of sale made by the Philippine Sugar Estates Development Company, Limited, of its property to the Insular Government, among which was included the Calamba Estate, the contracting parties agreed not to include in the said sale the railroad and the sugar mills which are claimed in the present case, for the reason that they had already been sold by the defendant

Company to Don Enrique Rueda, and in the appraisal of the property sold, the value of the property which is now specifically claimed in the complaint, was not included or paid.

II.

That on drafting the final deed of sale to the Government, which is attached by the plaintiff to the complaint, marked "Exhibit B" and made part of said complaint, it was understood by the contracting parties that the contract did not include the above mentioned railroad, sugar mills and accessories which are now claimed, and though in said instrument use is made of the words "and all other improvements and accessories which exist on the Hacienda" as included in the sale, it was understood by the contracting parties, that under such general terms, the said railroad, sugar mills and other accessories were not to be considered included in the sale, nor was it the intention of the parties to include them.

37

III.

That for this reason the defendants impugn the instrument attached to the complaint in that the same may give, and in fact does give rise to an interpretation which is con-rary to and does not express the real intention and agreement of the contracting parties.

Wherefore, the said sugar mills and railroad, not being included in the sale of the Calamba Estate to the Insular Government,

We ask this Honorable Court to render judgment acquitting the defendants and sentincing the plaintiff to pay the costs.

Manila, February 11, 1909.

(Signed) EDUARDO GUTIERREZ,
By ALEJANDRO SAENZ,
Attorney for the Defendants.

CITY OF MANILA, *ss:*

I, Francisco Gutierrez Repide after having been legally sworn, state: That I have read the above writing; That I know of my own personal knowledge the facts and allegations contained therein, and I do affirm that the same are true and such as in said writing represented.

38

(Signed) FRANCISCO GUTIERREZ.

Subscribed and sworn before me this 11th day of February, 1909, exhibiting his certificate of cedula No. 1335254, issued in Manila on April 3rd, 1908.

(Signed) ALEJANDRO SAENZ,
Notary Public.

My commission expires December 31, 1910.

(Stamped:) Alejandro Saenz, Notary Public, Manila, P. I.

(Title of the Case Omitted.)

Demurrer to the Second Amended Answer.

Now comes the above named plaintiff by Ignacio Villamor, Attorney General of the Philippine Islands, its Attorney, and demurs to the special defense set forth in the defendants' second amended answer in this action, for the reason that said special defense does not state facts sufficient to constitute a defense.

The said special defense alleges that prior to the execution of the contract of sale between the parties to this action, the execution of which is admitted by the answer of the defendants, there was an oral agreement whereby the sugar mills in question were excluded from the said contract and that the oral agreement provided that the said sugar mills should be reserved from the provisions of said sale, and that by mistake the said mills were included in the deed of sale.

39 This in effect, is an attempt to vary the terms of a written instrument by oral evidence of a previous oral agreement and is inadmissible under law.

Dated this 8th day of February, 1909.

(Signed) IGNACIO VILLAMOR,
Attorney General,

By R. D. B.

Received copy.
E. GUTIERREZ,
Attorney for the Defendants.

(Title of the Case Omitted.)

Decision of the Demurrer.

The amended answer filed to day by the defendants having been demurred to by the plaintiff on the same grounds as those alleged in the previous demurrer to the previous amended answer filed by the said defendants; having examined the last amended answer and taking into consideration the grounds of the demurrer filed against the same by the attorney for the plaintiff, the Court is of the opinion that although, in regard to the first paragraph of this last amended answer, the same reasons exist now as those which this Court considered well taken to sustain the demurrer filed by the attorney for the plaintiff, there is no reason to sustain said demurrer in regard to paragraphs second and third of the last amended answer, because, in the way they are worded, the defendants make use of the right granted by paragraph first of section 285 of the Code of Civil Procedure, putting in issue or trying to put in issue as erroneous or

40 imperfect and not expressing the true intent and agreement of the parties, the deed of sale of the Calamba Estate; in which estate, according to the description made in the preliminary agreement "Exhibit A" there exist or should exist the mills and accessories which are now claimed by plaintiff in the complaint.

In the first paragraph of the last amended answer reference is made to an agreement preliminary to the sale or to the execution of the deed of sale, and it is said that for this reason the value of the property which is specifically claimed in the complaint was not included or paid. It is true that the contents of a written document such as the deed of sale of the Calamba Estate, "Exhibit C," cannot be impugned or altered by parol evidence, but this does not mean that said instrument may not be impugned as erroneous or imperfect or as not expressing the true intent and agreement of the parties when the allegations in a written answer tend to show which is the true interpretation which must be given to the words of the contract, in regard to the intention of the contracting parties, and this is what the defendants have done in paragraphs second and third of their last answer, which allegation is in accordance with the denial made by the same defendants in their first answer of all the facts alleged in the complaint, from, and including, paragraph 7th thereof.

In a suit, the defendant can, in his answer, deny specifically under oath the contents of a document filed with the complaint, dis-
41 pute the same, and try to show at the trial that said document does not contain the true intent of the contracting parties, or that such document is erroneous or imperfect, so that the Court may decide which is the true interpretation to be given to the contract in regard to the real intention of the contracting parties.

The demurrer to the amended answer is therefore sustained as to the first paragraph of said answer and the said demurrer is overruled as to the second and third paragraphs of the above mentioned answer.

Manila, February 11, 1909.

(Signed) MANUEL ARAULLO, *Judge.*

The parties were notified of the above decision.

(Signed) F. CANILLAS.

(Title of the Case Omitted.)

The attorneys for the plaintiff and the defendants having stated that in view of the turn which the issue has taken on the admission of the two paragraphs of the amended answer, the suspension of the hearing of the case is necessary in order to take the depositions of some witnesses who are absent from the Islands.

It is ordered that the case be suspended until further notice, and the attorneys both for plaintiff and defendants shall, within fifteen days, file in this Court the corresponding interrogatories in order to issue the necessary commission, for the taking of said depositions.

42 Manila, February 11, 1909.

(Signed) MANUEL ARAULLO, *Judge.*

Today February 11, 1909, the parties acknowledged notice of the above decision.

(Signed) F. CANILLAS.

From the 11th day of February, 1909, till October 3rd, 1911, the above case was set for trial several times and the hearing thereof postponed on motion of both parties.

On October 3rd, 1911, the parties in the case filed the following agreement.

(Title of the Case Omitted.)

Agreement.

Now come the attorneys for both parties in the above entitled case and to this Honorable Court respectfully state:

That by common agreement they ask this Honorable Court to postpone the hearing of the above entitled case till October 25th of the present year.

Manila, October 3, 1911.

(Signed) IGNACIO VILLAMOR,
Attorney General.

(Signed) E. GUTIERREZ,
Attorney for the Defendant Company.

The above petition is granted.

Manila, October 4, 1911.

43 (Signed) S. DEL ROSARIO, *Judge.*

At the back of this agreement and resolution the following is stamped: Clerk's Office. Filed on the 3rd of October, 1911, At 4.30 p. m. (Signed) E. V. Filamor, Deputy Clerk.

(Title of the Case Omitted.)

MANILA, P. I., October 16, 1911.

To the Honorable Attorney General and Mr. E. Gutierrez.

SIRS: You are hereby notified that the above-entitled case will be heard in Part III of this Court on the 25th day of October, 1911, at 11 a. m.

If you desire to subpœna witnesses notify this office forty-eight hours in advance of the time requiring their appearance, with a brief note of the names and addresses, otherwise the Sheriff's office will not be able to properly serve the subpœnas in time.

Applications for continuance should be made at least three days in advance of the date of the assignment and should be accompanied by an affidavit of merits. If on the ground of absent witness the affidavit should specify the name of each witness and what the affiant expects to prove thereby.

(Signed) J. McMICKING, *Clerk.*

44 Received copy of the foregoing notice this 17th day of October, 1911.

(Signed) E. GUTIERREZ,
By J. BYLAY.

Received copy of the foregoing notice this 17th day of October, 1911.

(Signed) F. R. FERIA,
Attorney for the Plaintiff.

(Title of the Case Omitted.)

(Stamped:) Court of First Instance, Manila, P. I., October 25, 1911. Clerk's Office.

Now comes the Attorney General representing the Government in the above entitled case and excepts to the resolution of this Court dated February 11, 1909, overruling the demurrer filed by the plaintiff in regard to paragraphs second and third of the special defense filed by the defendant.

Manila, October 25, 1911.

(Signed) IGNACIO VILLAMOR,
Attorney General.

(Title of the Case Omitted.)

(Stamped:) Court of First Instance, Manila, P. I., October 25, 1911. Clerk's Office.

Now comes the undersigned attorney for the defendant
45 Company in the above entitled case and excepts to the resolution of the Court dated February 11, 1909, sustaining plaintiff's demurrer as to the First paragraph of the special defense filed by the defendant in its answer.

Manila, October 25th, 1911.

(Signed) E. GUTIERREZ,
Attorney for the Defendant.

(Stamped:) Clerk's Office. Filed on the 25th of October, 1911, at 3 p. m. (Signed) E. V. Filamor, Deputy Clerk.

On October 25th, 1911, the case was called for hearing before Honorable Simplicio del Rosario, Judge of the Court of First Instance in the city of Manila, presiding part III of said Court, the following exhibits being introduced during the hearing of said case.

EXHIBIT No. A.

Department of the Interior,
Bureau of Lands, Manila.

Received March 28, 1906, Bureau of Lands.

CALAMBA, LAGUNA, March 24th, 1906.

Director of Lands, Manila, P. I.

SIR: Complying with your communications No. 4301 of
46 March 13th and 21st, 1906, I have the honor to submit here-

with statements signed Eloy Hernandez, Pablo Hernandez, Maximiliano Villanueva, Justo Jarumayan, Esteban Arambulo, Agustin Habacon, Vicente Soriano and Rafael Pabalan, re the sugar mill controversy on the Calamba Estate. As to "Who the Hernandez brothers are," mentioned in your letter of the 21st inst., there are three brothers of them, Eloy, Inocencio and Ernesto Hernandez, Spaniards, who came here from no one knows where, although in a conversation had with Lieut. McCoy of the Constabulary last December, he stated that one of them was or had been a Spanish convict, and if I remember right, it was Eloy of whom we were talking at the time. It is said that when they first drifted into Calamba in 1899 or 1900, they did not have a cent of money nor any clothes, but have in some manner accumulated quite a drove of valuable carabao, seem to have plenty of money and an assortment of tools, wagons, carts, implements etc.

They seem to be interested in, and connected in some way with a number of local transactions that do not look just right, and are held in very poor esteem by the natives, who say they take every thing that is loose and sell it for what they are offered.

Of the three brothers, Inocencio, the oldest is at Los Baños most of the time, Ernesto the youngest, and who seems to be weak minded, is generally out in the mountains at work, though I have not yet been able to find out what it is he is working at. Eloy, the second oldest, seems to be the brightest of the three, and does all the
47 thinking, planning and ordering of things.

Personally, I have found him to be a most unscrupulous liar, and as unreliable and untrustworthy as can well be, not only in matters of importance but in little things that amounted to absolutely nothing. Please note his statements to me when I first came to Calamba last November, when he told me he was the duly appointed agent of the Philippine Sugar Estates Development Co., and had his appointment, signed by Sr. Francisco Gutierrez himself; that whatever he had done or ordered done was all right and had been done by order of Mr. Gutierrez. Then later, one day when in accordance with your telegram of Dec. 5th, in which you requested me to "interview the alleged representative of the Sugar Co.," and "request to see his authority," he was called in for that purpose and stated in the presence of Mr. Blanchard of the Attorney General's office, that he was the Company's agent, and after some further questioning by myself and Mr. Blanchard, admitted he had never been appointed agent by the Company, and had been only verbally ordered by one Macario Marcó of Biñan, to do these things, and that he did not know whether or not Marcó had any instructions from the Company.

Both Mr. Marcó and Hernandez have told me many times that the mills in question were not included in the sale to the Government of the estate; that they were still property of the Company, but that they were worth absolutely nothing in a monetary sense; yet at the same time they spent in some cases hundreds of
48 pesos in dismantling and transporting them into town. They

also said this had been done by order of the Company, which does not agree with the Company's statement that the mills had been sold years ago to a certain Enrique Rueda.

As to the understanding I claim exists between Eloy Hernandez and Macario Marcó, and about Hernandez having been coached as to what to say, I simply wish to call your attention to the following:

On the noon of March 15th, I had Eloy Hernandez called to my office, and made a statement to him something like this:

"Hernandez, I am in some trouble about this machinery you moved into Calamba from Mapagon, Mayapa, Calamias, Sirangluran, Real and Punta, and I want you to help me out if you can. It appears in the deed to the Government that these mills were included in the sale and transferred with the land to the Government, and now the Government wants me, its agent, to account for them, and I want to establish the fact that when I came here to take charge of this estate, these mills were no longer in their places, and that I could not take charge of them; that they were never turned over to me and that I cannot therefore be held accountable for them.

Now you have told me a number of times that you had moved all of these mills into town by order of the Company, and I would like you to help me by giving me a statement signed by you, bearing out what you formerly said, particularly as to dates, and just
49 what parts and pieces of each plant you removed, so as to show these dates to have been prior to my taking charge of the estate."

He replied: "Si señor, I will do this for you with great pleasure, for it is not right that you should be held accountable for things which were never placed in your care, and though I am not able to give you the exact dates from memory, I have still my old records and receipts and many other details covering these transactions. I am sure I can help you some with this for I was in charge of all this work and kept a record of it, such as lists of names of my workmen, wages paid them, and all such data pertaining to the removal of both the mills and the tramway and their storage in the camarin in Calamba. If you will give me till two o'clock this afternoon I will get together all these papers, bring them here to your office and will then help you in what you wish."

These statements were made in the presence of my clerks, Cruz, Pabalan and Soriano.

As it was then past twelve o'clock, I agreed to wait for him to bring up his papers at two that afternoon.

He failed to come at 2 p. m. and I sent for him at 4; but the clerk said on returning, that Hernandez was not at home.

I sent for him again on Friday morning and Friday afternoon and again on Saturday morning, but he was not at his house.

On Monday morning, March 19th I again sent for him, and this time he came. I asked him why he had not come back on
50 Thursday afternoon as he had agreed to do, and he replied that he had not been able to find the papers he wanted to bring; that he could not find a single scrap of paper bearing on this case in any manner; not even the bills of sale for his Carabao used at

that time could be found; that he had gone so far in his search as to go to Biñan to see Mr. Marcó hoping he might possibly have some of the papers or at least remember something definite about the matter, but that he had been entirely unsuccessful in every way. He then agreed to sign a statement detailing the pieces of machinery removed from each of the mills in question. (See statement.)

He declares positively that the pieces set forth in this statement were all that had been removed by him, or of which he had any knowledge. It will also be seen that he asserts he was but an ordinary day laborer, while every one else questioned on the matter says Eloy Hernandez was in charge of all of the work; not only in the removal of the mills to town, but also in tearing up the track which formerly extended from the town plaza to the water front, for a distance of probably 1¼ miles.

On the day he signed this statement, he told me he was unable to give me any information about who removed and stored these rails, as they were already gone when he reached Calamba in 1900.

I can swear personally, that the tramway system was in use in the year 1901 because I saw it then.

51 Hernandez declares further in his statement that 3 bolas, (Crushed rollers), sharg, and, in cases of steam mills, the boiler was positively all that was removed from the four mills he claims he helped remove, while in fact, the Company's camarin here is full of parts of steam and water mills, roller beds, shafts and shaft couplings, engines, wheels, mill bases, boxings, pipes and a lot of parts and pieces of machinery for which I do not know the names nor uses.

Soriano stated to me that one day last year he had seen Sr. Pedro Perlas, of Santa Rosa, drive up to the camarin, and in company with Eloy Hernandez, take therefrom several pieces of small machinery and steam fittings, load them on a Carabao cart and drive away.

I went to Sta. Rosa on March 20th to interview Mr. Perlas, but was told by his family that he was out in the country at his mill and would not be back till 4 of 5 o'clock in the afternoon.

I waited in town till after four o'clock and again went to his house, when I was told he had come home about fifteen minutes after I left in the morning, had changed his clothes and gone to Manila, and from there would go to one of the Ilocos Provinces where has has a rice mill; that he would not be back for several weeks. I could find out nothing from the family. Their statement that he had gone to Manila seemed strange to me however, for when I went to the house in the morning, it was already after ten o'clock, and

52 as the boat for Manila leaves Sta. Rosa at about nine or half past nine in the morning, there was hardly any way for him to get to Manila that day.

There is a Blacksmith and Machinist in Sta. Rosa by the name of Gatchalian to whom I was directed for possible information, and during an interview in which I claimed to be looking for parts of a watermill which I said I wished to purchase, he asked me why I did not go to the Spaniards in Calamba; that they should have about what I wanted. I told him they did, but that they wanted too high a price and even then did not seem to be anxious to make a trade.

He simply remarked that "that was funny." I also drew from him that being a good machinist and blacksmith (and for a native, he has an extensive plant and facilities) he did all of Mr. Perlas' repairs, and that last year he had repaired and refitted for Mr. Perlas, his sugar mill, thoroughly overhauling the mill and fitting thereto some parts, he, Perlas, and purchased in Calamba, but I could not find out from him, from whom Perlas had purchased them, nor more than they were "steam fittings."

Investigating the claim that the Hernandez brothers had sold lots of old iron and parts of machinery to ironmongers in Manila, where it had been shipped, I found that in at least one instance this was true. (See statements of Augustin Habacon and Mariano Banatin). To bear out these statements, I would point to the fact that a large cog wheel and several pieces of iron rail were found in the bay, a short distance out, which had inadvertantly fallen overboard while being taken out to the casco that took all this iron to Manila.

53 I was also told that two smoke stacks had been sold to Esteban Arambulo, which had formerly belonged to the steam mill of Punta, but on investigating, Arambulo said (see his statement) that these had been given him by Eusebio Elefaño. Elefaño is dead, and his son does not claim to know anything about the matter. The stacks are in use today on Arambulo's mill.

The sugar mill at Real, which in the deed is stated to be a "steam" mill, is not a steam, but a water mill is almost intact, not having been dismantled as formerly stated. According to Herandez, was left intact because the land on which it is located belongs to the Company and not to the Government, and that the mill need not be disturbed. Several of the brass bearings and shaft boxings are missing, the water wheel is rotted as to wood work, and three large caldrons and all the small ones, 8 in number, are missing. Some of the long bolts binding the woodwork*d* to the steel shaft and spreaders have been taken out having been hacked out of the wood by a bolo or hatchet.

One of the large caldrons belonging to the steam mill at Punta was found in the camarin belonging to Eusebio Elefaño, but Mariano Elefaño, his son, claims to know nothing about how it got there. One large and one medium sized caldrons are stored in the Company's Camarin here in town, another large one is being used by the troop of Cavalry stationed here; all the others are missing.

The large, or 1st class caldrons cost P500. each, the medium or 2nd class cost P200. each, and the Mills at Punta, Siranglupan and Real were the only ones in the country equipped with them,
54 and they should be easily identified could they ever be located.

As to the machinery broken, the only pieces that I have found that had been broken, were some of the cog wheels, probably 15 or 20 in number, which had the cogs broken out, supposed to have been done by insurrectos, but these would probably not cost more than P20 or P30 a piece to replace with new ones; in fact, Mr. Catchalian offered to make me some of the same size and pattern and fit them to the shafts for that price. I also noticed on one of

the roller beds where the corner of the boxing lip had been broken off, but this would not disable the part.

Soriano informs me that the plans and specifications for all these mills are, or should be in the Company's possession.

I am unable to secure direct proof of any of this machinery having been sold, all talk and rumors to the contrary, notwithstanding. As regards the "two exceptions" mentioned in my former communications, there is really but one, that of the mill at Real, which is still in place. The other exception, which I stated was in process of transportation, is the Mañgumit mill, one that is not mentioned in the deed, and not one of those under investigation.

There are actually in the Company's camarine today, five of the six mills mentioned in the deed; viz: Punta, Sirang-lupa, Mapagon, Mayapa and Calamias. The other mill, which it was said Eloy Hernandez had set up and was operating for himself, I found upon investigating the matter, was a portable boiler and engine
55 sold by a party of Tanauan, Batangas, to some one at Sta. Cruz, Laguna, and which Hernandez had contracted to move from Tanauan to the waterfront at Calamba. Dr. Woods, the Vet. Surgeon at this place told me he had had a talk with Hernandez while this mill was on the town p-aza, in process of being moved, and that Hernandez had told him it was his own private property. Mr. Woods says it was a complete portable outfit in apparently good condition, but as none of the mills under investigation were of the portable type, I am satisfied that this particular one does not in any way concern us.

According to the statement of Maximiliano Villanueva, who claims to have been "capitaz" or foreman in all of these mills at different times, and claims to know well the number of caldrons each mill had, the six mills were supplied as follows: Punta six 1st class and six 2nd class caldrons; Sirang-lupa, six 1st and six 2nd class caldrons; Real, eight 1st and six 2nd class caldrons; Mayapa twenty four chinese caldrons; Mapagon, twenty four chinese caldrons, and Calamias, twenty four chinese caldrons.

1st class caldrons according to Villanueva, had a capacity of 480 gals., and cost P500 each; second class caldrons, capacity 240 gals. and cost P200 each; and chinese caldrons, capacity 40 gals. and cost P7.50 each. For the six mills therefore, there should be 20 1st class, 18 second class and 72 chinese caldrons, while I can only find a total of 8 1st class, 1 2nd class and 11 chinese caldrons, dis-
56 tributed as follows: Five 1st class at Real mill, 1 1st class in the company's Camarin, one in the camarin of Eusebio Elefano, and one, being used by the troops. One 2nd class caldron in the company's camarin; eleven chinese caldrons in the company's camarin. This leaves 12 first class, 17 second class and 61 chinese caldrons missing, and which I have been unable to locate.

The missing caldrons alone represent a money value of P9857.50 of the iron roofing and balance of material belonging to these mills, absolutely nothing can now be found, and it is claimed these were all destroyed by insurgents.

The company's camarin in which this machinery is now stored,

was occupied by Messrs. Finlay and Goehr, Marchants, till the end of the year 1903, while the building adjoining it, and which has been blown down, was occupied by the Cavalry as a stable, till about the same year or probably even longer, and up to this time there was no machinery of any kind stored in either. The only machinery stored in town at that time, was the steam mill Punta, which was dismantled and stored in 1897 by Sr. Ibarra, storing part in his own camarin and part in the Hacienda building.

There were also stored in the Hacienda building, blacksmith's and machinist's tools and equipments of many kinds, but which now have entirely disappeared and the Punta mill was moved and stored in the Company's camarin in 1904.

57 Soriano states that Marco came and asked him to help locate this punta mill, saying that the Company has ordered its storage in their camarin, and that at this time nearly all the other machinery was already stored therein. There are stored in the blown down camarin, and the lot surrounding it, the following pieces:

4 pcs. Molave, 10″ x 10″ x 14′ (Part of Mill base).
2 " " 10″ x 10″ x 6′ do.
12 crusher rollers 18″ x 36″.
4 " " 12″ x 20″.
10 roller Beds and upright standards.
1 seven ft. fly wheel and shaft.
1 five " " " " "
1 four " cam wheel & shaft with 8″ piñon wheel.
1 extra large iron platform mill base.
1 large " " " " "
1 engine, steam chest, governor, etc.
1 3 ft. inside cam speed wheel.
1 3 ft. outside cam speed wheel.
1 6 ft. double outside cam wheel.
2 4 ft. fly wheels with eccentrics.
1 water wheel, shaft and cam transmission wheel and piñon.
1 4″ x 5′ turned shaft.
1 6″ x 8′ do.
1 6″ x 6′ do. (coupling shaft).
2 6″ x 4′ do.
1 8″ x 4′ do. do.
1 4″ x 4′ do. piñon cam & eccentric.
1 7″ x 9′ main shaft, with piñon.
3 tubular boilers.
2 non tubular boilers.

In the camarin which they locked when they found I was taking inventory, are stored the caldrons, tramway rails, cars for same, parts of engines, pipes, tools, pieces of machinery (small), boxes full of bolts, nuts boxings, bearings, wheels, and an assortment of articles which I cannot name, not knowing the uses for which intended. Neither Marco nor Hernandez have refused to let me have the keys to this camarin, because I have never asked them to, but at the same

time I am sure had they not seen me taking inventory they would not have closed the place, as it had been standing open for
58 over a year prior to my coming.

Respectfully submitted,

(Signed) CHAS. N. WALT, *Agent.*

Enclosures.

NOTE.—An iron block and tackle and chain were found in possession of Lorenza Echeta, widow of Friar's former blacksmith & machinist. Also a box containing an assortment of bolts and screws. Woman says these things belong to Hacienda.

Villanueva and Eloy Hernandez state that they were the ones who took the machinery from the Calamba Estate, except the machine at the place called Real which machinery has not been taken away from there, and that of Punta which was taken away since the year 1896 and was stored in the Camarin of the Estate of Calamba, being removed from there to the Company's camarin. They were the same persons who lifted the rails of the tramway connecting the Estate and the shore. These two witnesses assert that they took said machinery and lifted the rails of the tramway by order of the Company's agent, but it seems that they are more inclined to testify in favor of the latter, since they say that from the machinery which existed in several parts of the Estate and which they took away, there remain only the large pieces; the small ones and all those which were easy to be transported having disappeared and even the large
59 ones which remained they were all in a bad condition.

Vicente Soriano states that when said machinery was taken away from the Estate it was all complete and in good repair. Descending to details, he says that from Mayapa they took the boiler in good condition, the three rollers also in good condition, with the exception of the cylinders, the flywheels, pillow-blocks and other minor pieces which were already stored in the camarin of the Estate from where they took them. From Mapagon they took two shafts, two cam wheels, three rollers, two roller beds and other small pieces, including the shaft bearings and even the platform. From Siranglupa they took away the boiler, the cylinders, the rollers, pillow-blocks, flywheels and cam wheels and other small pieces and the platform. From Calamias they took the same pieces as in Mapagon. That of Real is still in its place and in good condition, except the wooden wheel which has rotted. So that, according to this witness, when said machines were taken away they were all in good condition. He states also that when the tramway rails were lifted they were all in good order and fit for use as well as the cars. He corroborates the statement of Villanueva and Hernandez as to the fact that the machinery at Junta was already stored in the Camarin of the Estate on the date when the other machinery was taken away.

Procopio Pabalan states that he saw said machinery during the year 1902-1903, and he saw that it was in good order and complete, with the exception of some small brass pieces which are those

60 which the revolutionists took away to make bullets out of them. The same statement is made by Pablo Hedreida in regard to the Mayapa farm. According to Rafael Pabalan, at the time the census was being taken he had occasion to see the farm at Mayapa and he saw that the machinery thereon, as well as the camarin, were in good condition and only the connecting pipes were missing.

The greater part of this machinery is stored to-day in the camarin which the Company has in Calamba since there is proof that part of said machinery has been brought to Manila, although it is not known by whose orders, Hernandez himself being the person who shipped them. This fact was testified to by Agustin Habacul and Mariano Banatin.

Said machinery was bought about the year 1895 or 1896 from Don Enrique Spitz in the Escolta and it was put up by one Mr. Willson who seemed to be from the same firm.

THE UNITED STATES OF AMERICA,
Supreme Court of the Philippine Islands:

I, V. Albert, Clerk of the above-entitled Court, do hereby certify that I have examined the attached document, to wit: a copy of Exhibit "B," that is to say, of an original deed of sale of the Calamba Estate which appears at pages 110 to 117 of case No. 4953 of the Court of First Instance of Manila and 7992 of the General Registry of this Court filed by the Government of the Philippine Islands against the Philippine Sugar Estates Development Company, Limited, et al., consisting of nine pages, all sealed at margin and
61 attached to this certificate. Said original deed has been removed from this place in the record in compliance with the agreement dated September 25, 1912, and was delivered to the Attorney General; and that I have compared the same with the original on file in my office, and that the same is a true and correct copy thereof.

In witness whereof I have hereunto signed my name and affixed the seal of this Court this 17th day of October, 1912.

[Seal Supreme Court of the Philippine Islands.]

(Signed) V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands,

(S'g'd) By P. R. ANGELL,
Deputy Clerk.

Deed of Sale of the Hacienda de Calamba.

I, Don Eduardo Gutierrez y Répide, of legal age, married, resident of this City of Manila, Philippine Islands, by profession a lawyer,

[Seal Florencio Gonzalez Diez, Notary Public, Manila, P. I.]

as General Manager and special attorney in fact, for the purposes of this deed, of the mercantile corporation (compañia mercantil anonima) "The Philippine Sugar Estates Development Company,

[Seal The Philippine Sugar Estates Development Company, Limited, Manila, P. I.]

Limited," a corporation duly organized, registered and domiciled in the said City of Manila, by virute of the full and sufficient
62 powers vested in me for the execution of these presents by the said corporation, as appears from letters of attorney executed on the 19th of October, 1905, before Don Francisco de P. Rodoreda, a Notary Public in and for the City of Manila, and by virtue of the authority also vested in me by resolution of the General Meeting of Stockholders of the said corporation held on the

[Seal Registry of Deeds, Laguna Province, P. I.]

18th of October 1905, and in consideration of the sum of One Million Three Hundred Eighty-five Thousand Four Hundred Forty-three Pesos and Twenty-nine Centavos, Philippine Currency (P1,385,443.29) to me in hand paid as representative of the said corporation, by the Honorable Luke E. Wright, Governor General of the Philippine Islands, I do, by these presents, sell, bargain and

[Seal Florencio Gonzalez Diez, Notary Public, Manila, P. I.]

convey, in fee simple, to the said Government of the Philippine Islands for and in behalf of the corporation by me represented, an agricultural property owned by the aforesaid corporation, styled Hacienda de Calamba, or San Juan Bautista de Calamba, situated in the municipality of Calamba province of Laguna, Philippine Islands, the description and boundaries whereof, as they appear in the title deeds of the hacienda are as follows:
63 Hacineda styled de San Juan Bautista or De Calamba, situated in the district of the pueblo de Calamba, which is

[Seal The Philippine Sugar Estates Development Co., Ltd., Manila.]

included in its area, in the province and judicial district of La Laguna. Bounded on the North by the boundary line between said pueblo and that of Cabuyao; on the South by the district of the pueblo of Los Baños; on the East by the Laguna de Bay, including the islet named Pulo-Calamba; and on the West by the districts of the pueblos of Tanauan and Santo Tomas, of the Province of

Batangas. It measures an area of sixteen thousand four hundred and fourteen hectares. At the present time about one-half of its land is uncultivated, said half abounding in timber suitable for building firewood, limestone deposits, quarries and pasture lands; the other half or rather two fifths of the hacienda, with the exception of a small part given over to town lots in the town and barrios of Calamba, is dedicated to the cultivation of rice by irrigation of which it yields at least two crops, of sugar-cane and of up-land rice. Within its area and at the plaza of the town are situated the plantation house, built of stone with tile roof, and two stone warehouses independent of the principal building, stone stables, two court-yards,

[Seal Registry of Deeds, Laguna Province, P. I.]

an orchard and zacate grounds entirely surrounded by a wall partly of masonry, and partly of wooden palings on a masonry foundation. Bounded in front by the plaza of the pueblo, in the rear by Calle Nueva, that is to say, the street that passes behind the church and convent, on the right by a large lot which forms the corner of the said calle Nueva and two other lots which following the line of the former run down to the street on the shore, on the left by the church yard the right wall of the church and the court-yard wall of the convent. Besides, all of the town lots of the pueblo and its barrios, including the new market lot, it owns the houses and storehouses formerly inhabited and occupied by the spaniards Don Jose Ibarra, Don Silvestre Barranquero, Don Jose Alvarez Navia and other town houses of the persons evicted in the years ninety, ninety-one and ninety-two, which were awarded to the Order as a result of judicial proceedings. In the barrio of Majada it owns the plantation house of this name, a new building of strong materials surrounded by a large stone fence, and in the neighborhood several coffee plants, and at different places the sugar mills with all outbuildings and accessories named "Mapagon," a hydraulic
64 mill, "Mayapa," a steam mill, "Calamias," a hydraulic mill,

[Seal Florencio Gonzalez Diez, Notary Public, Manila, P. I.]

"Siranglupa," a steam mill, "Real," a steam mill and "Punta," also a steam mill; though it is believed that these mills were destroyed, in part at least, by the revolutionists. It has two large dams for the irrigation of paddy lands, named San Juan and Campana dams, also one conduit and several irrigation canals and works reaching to the pueblo, specially the iron pipe conduit passing under the San Cristobal river, in the barrio of Calamias, which irrigates the Bantic and San Cristobal lands.

I likewise record that according to the survey and measurement of the said property recently made by the engineers and surveyors

of the Philippine Government the exact description thereof is as follows, to wit:

Beginning at an old monument on the southerly side of the Los Baños-Calamba road at the southeast corner of the estate; thence

[Seal The Philippine Sugar Estates Development Company, Limited, Manila.]

S. 53° 44′ W., a distance of 15760.0 ft. (3878.4 M.) to a large rock, marked with a hole in the center, at the beginning of a dry estero; thence in a general westerly direction, passing under the Santo Tomas-Calamba road, along said estero in its meanderings as a part of the southerly boundary, a distance of 14700 ft. (4480.6 M.),

[Seal Registry of Deeds, Laguna Province, P. I.]

more or less, to its junction with the San Juan river; thence N. 78° 15′ W., a distance of 500 ft. (152.4 M.) more or less, to an old monument; thence N. 73° 8′ W., a distance of 4280.3 ft. (1304.6 M.) to an old monument thence N. 71° 50′ W., a distance of 7106.0 ft. (2165.9 M.) to an old monument; thence S. 87° 13′ W., a distance of 5660.6 ft. (1725.4 M.) to an old monument; thence S. 84° 10′ W., a distance of 9519.4 ft. (2901.5 M.) to an old monument; thence S. 71° 20′ W., a distance of 11978.9 ft. (3651.5 M.) to an old stone monument on the top of Mt. Gonzalez; thence N. 18° 3′ E., a distance of 4007.5 ft. (1221.5 M.) to a rock marked with a cross at the beginning of the Mangamit or San Cristobal river; thence in a northerly and easterly direction along the center
65 line of said river in its meanderings as the natural westerly

[Seal Florencio Gonzales Diez, Notary Public, Manila, P. I.]

and northerly boundaries, a distance of 65400 ft. (19933.9 M.), more or less, to an old monument; thence in a general northeasterly direction along a line partly of bamboo and brush partly of an old ditch, and partly of bamboo and bushes (also marked by seven old monuments at irregular distances apart), a distance of 15000 ft. (4572.0 M.), more or less to an old monument on the shore of

[Seal The Philippine Sugar Estates Development Company, Ltd., Manila.]

Laguna Bay at the northeast corner of the estate; thence in a general southerly direction at mean low water along the shore of said Laguna de Bay in its meanderings as the natural easterly boundary, a distance of 38300 ft. (11673.8 M.) more or less, to an old monument

upon the shore of said Laguna de Bay; thence S. 18° 58′ W., a distance of 706.7 ft. (215.4 M.) to an old monument; thence S. 20° 36′ W., crossing a small lake, the shore of said lake being marked by a new monument, a distance of 3077.5 ft. (938.0 M.) to an old monument; thence S. 10° 8′ W., a distance of 1965.4 ft. (599.1 M.,) to an old monument on the southerly side of the Los Baños-Calamba road, the place of beginning—said estate containing an area of 13673 hectares, or 33786 acres, be the same more or less.

(Courses are true meridian.)

I also record that in this conveyance to the Government of the

[Seal Registry of Deeds, Laguna Province, P. I.]

Philippine Islands, which is subrogated thereto, are included all the rights and actions which the said corporation by me represented has now, or may legally have, in and to all buildings and irrigation works, together with all water rights, town lots and other improvements and hereditaments existing in and on the hacienda by these presents sold, bargained and conveyed, and I likewise subrogate to the Government of the Phil. Islands all the rights and actions which

[Seal Florencio Gonzalez Dies, Notary Public, Manila, P. I.]

the said corporation by me represented has now or may exer-
66 cise for the recovery of rents now due and unpaid by the occupants of the said hacienda and to all standing crops of every description existing thereon, with the exception of rents which may be owing by the Government of the United States to the vendor corporation by reason of the occupancy by the United States Army of buildings belonging to the aforesaid corporation.

I likewise record that I hereby bind the corporation by me rep-

[Seal The Philippine Sugar Estates Development Co., Ltd., Manila.]

resented to deliver to the Government of the Philippine Islands, at the earliest possible date, all title, deeds and muniments of title of the hacienda by these presents sold, together with all the maps, leases, lists of lessees, and all other books and documents, without exception, which the said corporation has in its possession or control, and which can or might in any degree be of service to the said Government, to show lawful ownership and peaceable possession by the said corporation and its predecessors of the property sold,

[Seal Registry of Deeds, Laguna Province, P. I.]

bargained and conveyed by these presents and I furthermore bind the said corporation to aid and assist the Government of the Philippine Islands in any and all investigations which may be found necessary to ascertain and prove said ownership and possession, specially in all proceedings which may be undertaken for the
67 purpose of securing a perfect title to this property in the new Land Registration Of-icce and clearly to establish what persons have been the lessees thereof.

I likewise record that there are expressly excluded from this

[Eight 20 pesos documentary stamps cancelled by F. Gonzales Dies.]

sale and conveyance the parcels of lands, town lots and buildings, as referred to in the preliminary contract entered into on December 22, 1903, by and between the Honorable Wm. H. Taft, Civil Governor of the Philippine Islands, as representative of the said Government, and the then representative of the Philippine Sugar Estates Development Company, Limited, Don Francisco Gutierrez, which contract is made part hereof for all legal purposes. In order to define and mark off beyond any doubt the location, extent and boundaries of this excluded portion, the Philippine Sugar Estates Development Company, Limited, will, within six months from the date of the signing of this contract, designate a surveyor who, jointly with

[Two 20 pesos documentary stamps cancelled by F. Gonzalez Dies.]

a surveyor named within the same time by the Government of the Philippine Islands, shall repair to the hacienda herein referred to and shall thereupon establish the exact portion excluded from this sale, according to the stipulation of the said preliminary contract,
68 and shall make technical plans in accordance therein. In case both engineers or surveyors shall not agree upon any of the points submitted to them, they shall by common accord appoint a third who shall finally determine the disputed point or points, always in accordance with the stipulations set forth in said prelimi-

[Seal Florencio Gonzalez Dies, Notary Public, Manila, P. I.]

nary contract of December 22, 1903. After the property excluded from this sale and conveyance has been determined and described the Government of the Philippine Islands shall execute a proper

instrument in favor of the vendor corporation setting forth the portion excluded, the drawing up of said instrument to be at the ex-

[Seal The Philippine Sugar Estates Development Company, Limited.]

pense of the said vendor corporation, the Philippine Sugar Estates Development Company, Limited.

Finally, I record that it is hereby covenanted and agreed that the Government of the Philippine Islands is, from the present moment, the owner, in fee simple, of the hacienda or agricultural property

[Ten 20 pesos documentary stamps cancelled by F. Gonzalez Diez.]

referred to in this contract, free from all charge and encumbrance, and that I obligate the corporation by me represented to warrant and defend the said Government of the Philippine Islands, now and forever, against any and all claims whatsoever presented
69 against said property including all adverse claims to the

[Seal Registry of Deeds, Laguna Province, P. I.]

title and registration of the hacienda in the new Land Registration Office, and for this purpose it shall be understood that this warranty of title shall extend not only to cases expressly covered by existing laws but also in the event that the Government of the Philippine

[Seal Florencio Gonzalez Diez, Notary Public, Manila, P. I.]

Islands should fail in its attempt to register in the manner stated the property by these presents sold and conveyed, and with respect to any charges or encumbrances which may be found to exist upon the property sold at any date prior to the execution of these presents, the corporation by me represented is hereby made re-

[Seal The Philippine Sugar Estates Development Co., Ltd., Manila.]

sponsible therefor and binds itself to pay and cancel same or to indemnify the purchaser in case it does not do so.

In turn, I, the Very Reverend Father Fray Lucio Asencio y

Pascual, as Provincial Vicar of the Dominican Order or Order of Preachers of these Islands, that is to say, the Province of the Most Holy Rosary of the Philippines, and as the head of the Convent

[Eleven 20 pesos documentary stamps cancelled by F. Gonzalez Diez.]

of Saint Dominic of Manila, by virtue of the powers and authority vested in me in accordance with a substitution of a power of attorney to me executed on the 8th of July, 1901, by the Very Reverend
70 Father Provincial Fray Santiago Paya, do become party to

[Seal Registry of Deeds, Laguna Province, P. I.]

the execution of this instrument and solemnly bind the religious corporation by me duly and fully represented, to respond as surety for the performance of each and all of the obligations contracted in these presents by the corporation, "The Philippine Sugar Estates Development Company, Limited," responding severally and jointly with the said corporation for the prompt and complete performance of said obligations and for the payment of damages arising to the Government of the Philippine Islands through breach of same; and jointly with the vendor to warrant the title of the said Govern-

[Seal Florencio Gonzalez Diez, Notary Public, Manila, P. I.]

ment of the Philippine Islands or of its successors in interest to the property by these presents conveyed.

In witness whereof we do freely and voluntarily sign these presents in the presence of the undersigned witnesses to this indenture, all of us, before Señor Don Florencio Gonzalez Diez, a Notary Public

[Three 20 pesos, One 10 pesos, One 3 pesos documentary stamps cancelled by F. Gonzalez Diez.]

in and for this capital. Manila, October nineteen, nineteen hundred and five.

(Signed) FRAY LUCIO ASENCIO,
Provincial Vicar,
For THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED.
(Signed) EDUARDO GUTIERREZ REPIDE,
General Manager, Holding Special Power of Attorney.

71 Witnesses:
(Signed) EUSEBIO ORENSE.
" JOSE VARELA CALDERON.

[Seal The Philippine Sugar Estates Development Co., Ltd., Manila.]

UNITED STATES OF AMERICA,
Philippine Islands:

In the City of Manila, Philippine Islands, on the nineteenth day of October, nineteen hundred and five, that is to say, on the day of the execution of this indenture, personally appeared the persons executing same, known to me to be the same persons who executed the foregoing instrument, and signed same in the representation by each one of them held, and acknowledged that the same

[Seal Registry of Deeds, Laguna Province, P. I.]

is their free act and deed, done in the name and representation of the principals by them represented.

Señor Don Eduardo Gutierrez Repide exhibited his certificate of registration numbered 157563, issued in this city of Manila on the 29th of April of the current year, and Very Reverend Father Fray Lucio Asencio y Pascual did not exhibit said certificate of registration for the reason that he is exempt on account of age from the obligation of providing himself with same.

In witness whereof I have hereunto affixed my signature on the date above mentioned.

[Seal Florencio Gonsalez Diez, Notary Public, Manila, P. I.]

(Signed) FLORENCIO GONZALEZ DIEZ,
Notary Public.

My commission expires on December 31, 1906. 20¢ stamp.

72 Office of the Register of Deeds.

[Seal Provincial Treasurer, Province of Laguna, P. I.]

The above *proceeding* document has been registered in this Registry of the Property at 3 o'clock in the afternoon of this date and note has been taken of the same under No. 226, book 2 of the Diary at folios 94 and 95, inscription No. 1 folio 91 to 101 of the

[Seal Registry of Deeds, Laguna Province, P. I.]

Municipality of Calamba, Laguna, P. I.
Santa Cruz, Laguna, P. I. July 30, 1906.
(Signed) C. H. LAMB,
Treasurer, Laguna, Act. Reg. of Deeds.

[Seal of the Supreme Court.]

(Here follows Exhibit No. 2, marked pages 73 to 79, inclusive.)

2.

The PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, purporting to be a corporation of the Philippine Islands, duly and lawfully organized, hereby agrees to sell and convey to the GOVERNMENT OF THE PHILIPPINE ISLANDS, nine (9) haciendas, formerly the property of the Dominican Order in the Philippines, as follows:

(1) The hacienda of Biñan, in the province of Laguna, said to contain by the survey of Villegas, a surveyor, 3,739 hectares, 10 ares and 18 centares;

(2) The hacienda of Calamba, in the province of Laguna, said to contain 16,424 hectares, and 14 ares;

(3) The hacienda of Lolomboy, in the province of Bulacan, divided into three parts,- the first and second parts at Polo, one containing 106 hectares and 53 ares, and the other containing 68 hectares, 19 ares and 50 centares, and the third part in the pueblo of Bocaue, containing 4,168 hectares, 9 ares and 66 centares;

(4) The hacienda of Naic, in the province of Cavite, said to contain 7,923 hectares and 29 ares;

(5) The hacienda of Orion, in the province of Bataan, said to contain 2,109 hectares, 87 ares and 24 centares;

(6) The hacienda of Santa Cruz de Malabon in the province of Cavite said to contain 8,902 hectares, 37 ares and 50 centares;

(7) The hacienda of Santa Maria de Pandi, in the province of Bulacan said to contain 12,069 hectares, 37 ares and 2 centares;

(8) The hacienda of Santa Rosa, in the province of Laguna, said to contain 4,750 hectares, 14 ares and 24 centares; and

(9) The hacienda of Tore, in the province of Bulacan, said to contain 58 hectares, 23 ares and 3e centares.

Reserving therefrom the cases haciendas and esmarins, in

-1- With the land included within the walls surrounding the Casa hacienda and esmarins,

described in the agreement made by the Secretary on July 6 1910 a copy of which is attached.

the hacienda and pueblo of Santa Rosa in the province of Laguna, and two hundred hectares of first class agricultural land therein to be selected by the agent of the Philippine Sugar Estates Development Company, Limited, in reasonably compact form near the casa hacienda, and selected so as to interfere with the use of the rest of the estate by the Philippine Government as little as possible and so as not to include any part of the poblacion but only agricultural land; reserving also the casa Majala on the mountain side of the Calamba estate, together with eight hundred hectares of cultivated sugar lands extending from the casa Majala toward the town of Calamba, to be selected by the Company's agent in as near a compact tract as practicable and so as not to interfere with the use of the remainder of the estate by the Philippine Government. The reservation of neither of these tracts is to include the source of the water supply for the estate from which reserved, and is not to be used by the Philippine Sugar Estates Development Company, Limited, or any successor in title, to the prejudice of the Government of the Philippine Islands or any successor in title to the lands hereby conveyed so far as the use of water thereon and the present system of irrigation is concerned, which shall be continued.

This sale and conveyance shall include all the buildings, machinery, irrigation work, dams, tunnels, ditches, and all other improvements thereon, together with all water and other rights and all hereditaments belonging to the Company on every part of the estates hereby agreed to be conveyed, except the two houses expressly reserved above, and also excepting a camarine in the poblacion of Orion in the province of Bataan, and a camarine in the poblacion of Calamba

and also the buildings already sold in Sta. Cruz de Malabon, one in Biñan and six in Calamba; the exact description of all will be given in the consummation of this sale.

which belonged to the Philippine Sugar Estates Development Company, Limited, but were not valued by Villegas, the surveyor, in the survey hereinafter referred to, from ignorance that they belonged to the Company. The land upon which the casarines of Orion and Calamba stand is included in this conveyance, but not the two buildings. As to this land, the Company, after the proposed conveyance herein agreed to, shall become the tenant of the Philippine Government. It is understood that the Philippine Sugar Estates Development Company, Limited, has sold upwards of four hundred hectares of sugar land in the Calamba estate which is to be included in the eight hundred hectares herein reserved to the Company and to be satisfied out of the same. It is also understood that the Company has sold ten hectares, more or less, with a rice mill thereon in Biñan. To make up for this amount, the said Company agrees to reduce the reservation of two hundred hectares in Santa Rosa by the amount thus sold in Biñan.

The Philippine Sugar Estates Development Company, Limited, agrees that it has good and merchantable titles to all the lands and buildings hereby conveyed, duly registered according to the laws of the Philippine Islands, and to produce evidence of the same for examination before the completion of this sale, and to convey the lands in accordance with this contract by a good and sufficient deed of general warranty of title to the Philippine Government. The Philippine Sugar Estates Development Company, Limited, hereby further agrees that should the Government of the Philippine Islands request it, it will obtain and deliver the quitclaim conveyances of the Dominican Order of the Philippines to the lands herein agreed to be conveyed to the Government of the Philippine Islands. It further agrees to furnish to the Philippine Government all its books, papers

POOR COPY

as a compensation by the Company for the taxes not collected by the Government, and the said taxes is hereby cancelled.

and other documents which it has, either in possession or under its control, bearing upon its ownership, or the ownership of its predecessors in title, of this land, which shall, in the opinion of the counsel for the Philippine Government, be useful to the Government of the Philippine Islands in determining who are the rightful tenants on the property, and in showing in cases of litigation the lawful and peaceable possession of the Philippine Sugar Estates Development Company, Limited, or its predecessors in title, and especially in showing the lawful and peaceable possession of the Dominican Order of the Philippines during the sovereignty of Spain. The Philippine Sugar Estates Development Company, Limited, further agrees to aid the Philippine Government in every way by procuring oral or documentary evidence (or showing where it can be procured) needed in establishing the title hereby conveyed to be valid and indisputable.

The Philippine Sugar Estates Development Company, Limited, in addition to the land above described, also hereby agrees to assign and convey transfer to the Government of the Philippine Islands all rents for use of land or buildings herein agreed to be conveyed due to the Philippine Sugar Estates Development Company, Limited,, or its predecessors in title, from tenants thereof and which are now uncollected, together with rents accruing between the date hereof and the consummation of the sale, except such rents as may be owing by the United States Government to the said Company for occupation of its houses by United States troops. this assignment

It is understood that this contract is based upon a series of surveys made by a surveyor named Juan Villegas during the years 1901 and 1902 at the instance of the Government

OPY

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of the Philippine Islands, in which he classified the lands and appraised their value; that on the basis of this survey and appraisement, the Civil Governor, on behalf of the Government of the Philippine Islands, by letter to Monsignor Jean Baptiste Guidi, Archbishop of Stamrepoli and Apostolic Delegate to the Philippine Islands, dated July 8th, 1903, made an offer to purchase the lands above described at the prices fixed by Villegas in Mexican Currency reduced to gold at the ratio of two to one, and this letter of the Civil Governor, together with the list of the estates of the Dominicans so called, which accompanied the letter and the surveys of Villegas of said estates, is hereby, for the better understanding of this contract, made part hereof as an exhibit by reference,- it being understood that the estate of San Juan del Monte mentioned in the list as belonging to the Dominicans was never conveyed to the Philippine Sugar Estates Development Company, Limited, and is not owned by the said company and is not included in the agreement to sell.

IN CONSIDERATION of the sale and conveyance of the lands and buildings above described, the Government of the Philippine Islands agrees to pay to the Philippine Sugar Estates Development Company, Limited, the sum of three million, six hundred seventy-one thousand, six hundred and fifty seven ($3,671,657) Dollars, in money of the United States, subject to this proviso that a survey shall be made by a surveyor or surveyors appointed by the Philippine Government, of any of the haciendas herein agreed to be conveyed, if the accuracy of Villegas' survey of such estate or estates is doubted by either party, in exact accordance with the descriptions contained in the

title deeds, the survey to be at the expense of the Government of the Philippine Islands, subject to such inspection and joint survey as the Philippine Sugar Estates Development Company, Limited, may wish to have made through a surveyor employed and paid by it, and if the result of a true survey is to show a less area of land in any estate than that now shown by Villegas' survey, there shall be an abatement of the price to be paid at the valuation fixed by Villegas upon the class of land found to be short, increased by one-fourth of such valuation. If on the other hand, the amount of land in any estate is found by such survey to be in excess of the amounts shown by Villegas' survey, then the purchase price is to be increased by the valuation of the land of that class as appraised by Villegas, plus twenty-five percent thereof. The survey above mentioned shall be begun as soon after the signing of this contract as is practicable.

It is understood that the Government of the Philippine Islands, in order to pay the purchase price hereof, is obliged to sell its bonds under and by virtue of the authority of Section 64 of the Act of Congress of the United States, approved July 1, 1902, entitled "An act temporarily to provide for the administration of the affairs of Civil Government in the Philippine Islands, and for other purposes."

The Government of the Philippine Islands agrees to make every effort to sell the bonds and obtain the proceeds as quickly as is practicable, and the time for the consummation of this contract by the conveyance of a good and marketable title by the Philippine Sugar Estates Development Company, Limited, and the payment of the purchase price by the Government of the Philippine Islands is fixed as of the end of the

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period within which such bonds may be engraved, advertised, sold and the proceeds thereof realized, and the necessary and necessary examination of the title surveys be made by prompt action of the Philippine Government.

IN WITNESS WHEREOF, the two parties to this agreement hereunto affix their signatures, the Philippine Sugar Estates Development Company, Limited, acting by Francisco Gutierrez, the Attorney in Fact of said Company, as shown by the attached power of attorney, and the Government of the Philippine Islands by Wm. H. Taft, Civil Governor, whose authority is shown by a certified copy of a resolution of the Philippine Commission also hereto attached.

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED,

by

Attorney in Fact.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

by

Civil Governor.

IN THE PRESENCE OF:

80 EXHIBIT No. 4.

The Government of the Philippine Islands,
Executive Bureau,
Manila.

29289-A243.
O.

May 24, 1909.

MY DEAR MR. GUTIERREZ: Mr. Carpenter asked me to send you the enclosed papers relative to the "Philippine Sugar Estates Development Company, Limited," and I have the pleasure to comply with his request stating at the same time that the best we can do is to furnish you with a certificate copy of one of the documents. We have made a minute search and we have not been able to find in our archives any data regarding the documents which you desire.

Regretting the inconvenience which this may cause you, I make use of this opportunity to once more assure you that I am your respectful servant,

(Signed) THOMAS CARY WELCH,
Acting Executive Secretary.

Mr. Eduardo Gutierrez, Attorney at Law, Calle Palacio, Walled City, Manila.

Interview of the Civil Governor of the Philippine Islands with Don Francisco Gutierrez (Repide), Manager of the Philippine Sugar Estates Development Company, Limited, September 24th, 1914.

There were present: The Solicitor General and Mr. Rafael
81 Del Pan, of the firm of Del Pan, Ortigas & Fisher, in charge of the examination of the titles of the so-called Friar lands.

The Civil Governor: I have just been informed by Messrs. Araneta and Del Pan that they have just prepared the form of the deed of conveyance which they believe must be executed by the Philippine Sugar Estates Development Company, Limited, and by the University of Santo Tomas and I hand it over to you now so that you may have the opportunity to examine it thoroughly.

Mr. Gutierrez: I should like to read it carefully.

The Civil Governor: Would you like to read it more at leisure and come back this afternoon?

Mr. Gutierrez: Yes sir.

The Civil Governor: I suppose we can treat about this matter this afternoon at half past three. I trust that you will find nothing objectionable or which you or the University of Santo Tomas may not do. In regard to the document to be signed by the University of Santo Tomas or by the Provincial on behalf thereof, Messrs. Araneta and Del Pan have endeavored to draft it so that any possible objection from you may be avoided, and I do hope they succeeded.

Mr. Gutierrez: I shall be greatly pleased to find that I have no objection to make.

The Civil Governor: We shall then get together again at half past

three. By the way, did my private secretary Mr. Remington furnish you with copy of the cablegram which Judge Taft sent me and which I read to you?

Mr Gutierrez: Yes Sir.

82 In the Afternoon.

The Civil Governor: Have you read the forms of the contracts which we propose and which we desire to be executed by your Company and by the University of Santo Tomas?

Mr. Gutierrez: Yes Sir.

The Civil Governor: Are you satisfied with them?

Mr. Gutierrez: There are some few things, which I want to discuss, the word "Ingenio" or sugar mill is used. There are no sugar mills on those Estates. Therefore, this word must be omitted. You will remember that on the sixteenth, when Governor Taft and the Commissioners held a session, the word sugar mill, "Ingenio," was inserted and I said that the Company had no sugar mills. Then Commissioner Smith asked again if the Company had any sugar mills and I answered him: No.

There is another change to be made. The pluperfect tense is used where it reads "or other rights of action which the Company may have had." This must read, "may have." I have sold some small parcels of land and therefore the present tense must be used because otherwise it would refer also to the parcels sold.

The Civil Governor: Where is the English text of the contract?

Mr. Gutierrez: The president of the Company has it, I have only the Spanish text:

The Civil Governor: I do not know in what connection it is used unless by the English text. This seems to be all right. I shall make a note of this. You may proceed.

83 Mr. Gutierrez: Reference is made here to the delivery of certain titles, contracts of lease, and so forth. I have added to this "which may at present be in possession of the Company," because many of these contracts were burnt or stolen during the revolution. For this reason I cannot deliver them.

The Civil Governor: I believe that there should be no trouble about that. Of course you cannot deliver what you have not.

Mr. Gutierrez: It is only to make things perfectly clear. The Company asks that a new survey be made of several estates. In this document only four are mentioned, and I have added to these four Lolomboy, Santa Rosa, and Santa Cruz de Malabon. We ask this in accordance with the preliminary contract.

The Civil Governor: Well, let us proceed further on.

Mr. Gutierrez: Something has been added in pen and ink at the end of this page which I do not fully understand. It seems to provide that a deduction is to be made, but this does not seem to be correct, because the deduction was already made when the preliminary agreement was executed. The deduction for the eight hundred hectares in the Calamba estate.

The Civil Governor (to the Solicitor General): I suggest that you

and Mr. Del Pan confer with Mr. Gutierrez and study the changes and reforms which he suggests, to see whether there is any real point of difference between us.

The Solicitor General: Very well; we shall inform you of the result of our conference.

84 (After the proposed conference was finished the interview was renewed.)

Mr. Del Pan: Mr. Gutierrez differs as to five points. Two of these are insignificant and it seems to us it is very easy to solve them, but the others are of considerable importance and we could not discuss them. Mr. Gutierrez desires that the Governor shall answer in regard to them. Would you like to do so?

The Civil Governor: Yes; I thought indeed that the first two or three were small, probably, mere changes in words.

Mr. Del Pan: The first important point is about the lack of measure. I put in a special clause in regard to these lands which the Government found lacking in measurement and said clause states that after some months the "Philippine Sugar Estates Development Company, Limited," might make a survey of said four estates, and Mr. Gutierrez wishes to include those of Lolomboy, Santa Rosa, and Santa Cruz de Malabon.

The Civil Governor: The English text of the contract does not authorize that, certainly not. I want an opportunity to carefully compare the English text with the Spanish, in order to see in what they differ; so that I think that we can leave this for the present and I shall devote myself to clear this out from now till Monday.

Mr. Del Pan: The second capital point is that referring to the estates of Santa Rosa, Santa Cruz de Malabon and Biñan which belong to the University of Santo Tomas according to our information.

I put in a clause in which it is provided that the special repre-

85 sentative of the College of Santo Tomas shall state that he, on behalf and as representative of the College of Santo Tomas receives the price of said three estates and waives any right to file any claim whatever in the future against the Government. Mr. Gutierrez says that we must say that the representative of Santo Tomas received the price of the estates previously, and not the price set down in the contract, that is to say, that he received the price agreed to in the contract of sale of these estates to Mr. Andrews.

The Cvil Governor: Does he want it changed so that it will read, not that the University of Santo Tomas acknowledges now to have received the price stated in the contract, but that it has received the price fixed for a sale at some other time?

Mr. Del Pan: The price for which these estates were sold to Mr. Andrews.

The Civil Governor: What is your opinion as an attorney about this?

Mr. Del Pan: My opinion, with which Mr. Araneta agrees, is that, if the College says in the document that it has received the price agreed upon in the contract, it shall never be able to make any claim, but if it states that it has received the price for which the estates were sold to Mr. Andrews, some day it may claim the difference.

The Solicitor General: I believe that it is just, in accordance with our theory that the Company never had any title to these estates, that the foundation shall now receive the benefit of the price paid by the Government.

Mr. Gutierrez: I accept the draft of the document such as
86 it was made in the beginning; without the amendment.

Mr. Del Pan: I made the amendment in order to fix my meaning more clearly. Every man makes mistakes and my first draft was a mistake.

Mr. Gutierrez: If the College of Santo Tomas could subsequently make any claim in bad faith, the "Philippine Sugar Estates Development Company, Limited" and the Dominican Order are there to answer.

The Civil Governor: It is true; but this takes us back to the original argument in regard to the necessity of the University of Santo Tomas taking part. As I understand, Messrs. Araneta and Del Pan have always insisted on the University of Santo Tomas taking part in the execution of the deed and receiving the price as provided for in the contract. Now then, Mr. Gutierrez, I do not see that there should be any objection to it. That is purely a matter between yourselves. You can arrange all that with the University of Santo Tomas to your own satisfaction and I do not see why you should hesitate in acknowledging receipt of the money.

Mr. Gutierrez: It cannot be done because the University of Santo Tomas cannot receive now what it received before.

The Civil Governor: Well, it can acknowledge receipt of the money. If the question is solely a private question to be settled between the Dominican Order and the University of Santo Tomas, I do not see any reason why the University of Santo Tomas may not say that it has received the money, if it really has received it.

Mr. Gutierrez: It is impossible that it shall say that it
87 has received now what it had already received before. It can sign a document in accordance with the proposed contract such as it was drafted in the beginning, without the amendment. If the document such as it was originally drafted were signed, the Government would be sufficiently secured, inasmuch as it would have at once the guarantee of the "Philippine Sugar Estates Development Company, Limited," and that of the Dominican Order.

The Civil Governor: I wish that you should be kind enough to give me the English text. I am talking somewhat in the dark, inasmuch as I have not the question before me. I am not sure that I entirely understand what is the point of difference between the wording that you are ready to sign and that which you are not ready to sign. I really do not see why you object to the contract such as Messrs. Araneta and Del Pan insist it shall be.

Mr. Del Pan: I do not see the difficulty of which Mr. Gutierrez speaks. The college of Santo Tomas never received the money. The Estates were sold to Mr. Aandrews for a small percentage of the price and Mr. Andrews acknowledged the debt and bound himself

to pay afterwards, in ten or twenty years. I don't remember exactly how many, the total amount owed by said estates.

Mr. Gutierrez: The College of Santo Tomas received the money in shares of the Philippine Sugar Estates Development Company Limited when this Company was organized.

The Civil Governor: But the difficulty about this is that it comes out to be precisely the other way. The conveyance to Mr.
88 Andrews and the confirmation of the same to the Philippine Sugar Estates Development Company, Limited, by the Dominican Order, establishes that the latter is the absolute owner of the property, and there is nothing to show an acknowledgement by the Dominican Order of any right in favor of the University of Santo Tomas. On the contrary the Dominican Order affirmed most formally its absolute ownership of these three estates. What we desire, in my understanding, is that the University of Santo Tomas, who is the real owner, according to the title deeds, shall say that it has received the money which we pay.

The Solicitor General: We understood from you (the Governor) that it had to be so; that they should say that they had received the money paid by the Government. The difficulty consists in that the Dominican Order sold that property and received the money and now the University would say that it received the money and the Government cannot consent to it.

The Civil Governor: Mr. Gutierrez, if the College of Santo Tomas has received the price of the original sale in shares of stock of the Philippine Sugar Estates Development Company, Limited, if the sale was made with the approval of the College of Santo Tomas, the owner of the property, and if said College received the shares of stock in payment, what difficulty can it have to state it so? We are buying the lands which those shares of stock represent; is there any difficulty in saying that it receives the benefit of the money which we pay?

Mr. Gutierrez: The money paid then, not now.

89 The Civil Governor: Why not now? You see that the title is in the name of the University of Santo Tomas and the price for executing the deed of conveyance must therefore go to the University of Santo Tomas. If there has been a previous agreement between the Dominican Order and the University of Santo Tomas by which they agreed that the Dominican Order could sell its lands (the University's) at a lower price, and they want to settle the matter so that the Dominican Order shall receive the difference, this is a question of private settlement between the Dominican Order and the University of Santo Tomas, with which we have nothing to do. We do not pretend to dictate what must be done with the money after the University of Santo Tomas has acknowledged receipt of the same to us. The University of Santo Tomas can give it to the Dominican Order or throw it into the bay, if so it chooses.

Mr. Gutierrez: But, as I have said already, this is impossible. The original proposed contract is the only one I can accept.

The Civil Governor: That is the original proposed contract which

you have, precisely. The original proposed contract is the amended one and not the typewritten one.

Mr. Gutierrez: But I cannot accept the amendment.

The Civil Governor: I am afraid we have arrived at a blind alley.

Mr. Gutierrez: I am afraid so too.

The Civil Governor: I want to remind Mr. Gutierrez again that the Philippine Sugar Estates Development Company, Lim-
90 ited, has bound itself to give us a good and merchantable title.

Mr. Gutierrez: If the title which I am going to give you is not sufficient, then, I cannot give any other. For this reason the sale cannot be made.

The Civil Governor: If the sale can be made or not, that is another question. I believe it can be made, and it will be made, but I do not want to touch this point until it is necessary. We have a contract the performance of which can be demanded, we think, before the courts, if necessary, and we believe, if our advisers are correct, as we think they are, as to their point of view, that the Courts shall order its performance.

Mr. Gutierrez: Yes, you may have the right to go to court, and I shall be very glad to see that the Courts give you what you ask, just as I would be glad to see that I am mistaken.

The Civil Governor: But what amazes me more, what really astounds me is that you should hesitate in a thing of this kind, when it is so easy to settle it if you want. It seems to me that you are placing an unsurmountable obstacle in a matter where there is none.

Mr. Gutierrez: No sir, I am not placing any unsurmountable obstacle in your way, but I cannot do an impossible thing. How can the College of Santo Tomas acknowledge to receive now a thing which already it received years ago? This is impossible.

The Civil Governor: No, it is not. The College of Santo
91 Tomas may acknowledge receipt of this money, and then if by reason of a prior contract between the Dominican Order and itself, this money must go to the Dominician Order, it can pay it to said Order, and we have nothing to do in the matter. It is a matter of interior arrangement which does not interest us. We do not intend to say what the University of Santo Tomas must do with the money after it receives it and acknowledges receipt of the same to us. This is indifferent to us. We are not in charge of the administration of the University of Santo Tomas, nor of following the money one single instant after it has reached the hands of its owner. As I said a moment ago, if there is any contract or arrangement between the two corporations, who are so intimately related that the one manages the other, by virtue of which all or part of the funds which we pay for these estates must be returned to the Dominican Order or to the Philippine Sugar Estates Development Company, Limited, that is their own business and not ours, and they can settle it between themselves in the easiest manner.

Mr. Gutierrez: The fact is, that I cannot give a better title. That is the only one I can give.

The Civil Governor: I shall bring this question before the Philippine Civil Commission on Monday and in the meantime I shall be glad to have an English copy of the proposed contract.

Mr. Del Pan: I can send it to you.

The Civil Governor: I shall bring this question before the Civil Commission on Monday and we shall decide.

92 I hereby certify that this is one of the official records turned over to me by Mr. Carl Remington, private secretary of the then Governor General, after the consum-ation of the purchase of Friar Land Estates.

(Signed) ED. WETTRE,
Chief Records Division, Executive Bureau.

May 19, 1909.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Judicial District of Manila, Part III.

Civil. No. 4953.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff,
versus
THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LTD., and The Dominican Order of PP. Predicadores of These Islands or Provincial del Santisimo Rosario de Filipinas, Defendants.

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Clerk: Enrique Filamor.
Stenographer: Julio Jimenez Jerez.
Counsel for the Plaintiff: Mr. Felicisimo R. Feria, Assistant Attorney General.
93 Counsel for Defendants: Mr. Eduardo Gutierrez Repide.

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(S'g'd) JULIO JIMENEZ JEREZ,
Stenographer.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Judicial District of the City of Mialna, III Branch.

Civil. No. 4953.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff,
versus
THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, and The Dominican Order of PP. Predicadores of These Islands or the Provincia del Santisimo Rosario de Filipinas, Defendants.

Hearing of the Above-entitled Case on October 25, 1911.

95 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila, III Branch.

Civil C-se. No. 4953.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff,
versus
THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, et al., Defendants.

Hearing of the Above-entitled Case on October 25, 1911.

Before Hon. Simplicic Del Rosario, Judge.

The above entitled case was called for hearing before this Court on this 25th day of October, 1911.

The plaintiff, the Government of the Philippine Islands, being represented by Mr. Felicisimo Feria, assistant Attorney General of the Philippine Islands, and the defendants, "The Philippine Sugar Estates Development Company, Ltd." and the Dominican Order of PP. Predicadores of these Islands, otherwise known as the Provincia del Santisimo Rosario de Filipinas, being represented by Don Eduardo Gutierrez Repide, who acted as their Counsel.

96 PROOFS OF THE PLAINTIFF.

Testimony of Inocencio Hernandez.

After being duly sworn, states that his name is INOCENCIO HERNANDEZ, merchant.

Direct examination by Mr. Feria:

Q. What employment had you about the years 1903, 1904, and 1905?

A. I was a merchant, as now.
Q. In what were you engaged then?

Mr. Gutierrez: The question is irrelevant and immaterial.
Mr. Feria: In order to save time, I desire to make my questions more direct.

Q. When was the first machine removed. When were the rails involved in this litigation, removed?
A. In May, 1903.
Q. The first machine?
A. About the end of the same year.
Q. And the other machines?
A. They kept on removing them; and as they were located at some distance from each other, some months later, all of them were taken away.
Q. Till what year?
A. Until 1906.
Q. Which was the first machine to be removed?
A. The first one was Ibarra's which was stored in a camarin in the town and was taken to that of the Estate.
97 Q. Where was it taken?
A. To a camarin of the Company.
Q. Where?
A. There, in the town.
Q. Tell us about it.
A. After some months the work was continued and the machine at Mayapa was taken away and afterwards, a small hydraulic one in the place of Calamias, then a hydraulic machine in the place of Mapagon and after that, a steam one with steam boiler in the place of Sirangluna, and finally a steam machine in the place of Maomig. This was the last one of all.

Mr. Gutierrez: I ask that the last statement of the witness be stricken out because this machine situated in Maomit is not claimed by the Government nor is there any al-egation in the complaint referring to it.
Mr. Feria: I ask the Court permission to amend the complaint in this respect because we have not been able to include this machine at Maoumit for the reason that it was taken away after the complaint had been filed, and for this reason I ask leave of Court to include that machine in our claim.
Mr. Gutierrez: I object to the motion of Mr. Feria since said machine has never been the subject of any claim nor of any al-egation in the complaint.
Judge: I grant permission to amend the complaint in the sense stated by Mr. Feria, without prejudice to filing it later in writing.
98 Mr. Gutierrez: Exception.

Q. Where were these machines which were removed, taken?
A. To the camarin which I said first. To the camarin of the Company.

Q. Where is that camarin?
A. In Calamba, a camarin in the town.
Q. Who ordered you to remove and take away that machine?
A. The manager of the Company.
Q. What is his name?
A. Don Francisco Gutierrez.
Q. Who were your companions in removing that machine?

Mr. Gutierrez: I object to the question because it is immaterial.
Judge: It is relevant.
Mr. Gutierrez: Exception.

A. My brothers and some workmen.
Q. Do you know any of these workmen?
A. If I should see them I would recognize them.
Q. Is there any one here in the Court?
A. There is no one.
Q. Do you know Maximiliano Villanueva?
A. Yes, sir.
Q. When did you know him?
A. In 1901 or 1902.

Mr. Feria: That is all.

Cross-examination by Mr. Gutierrez:

Q. When did Mr. Francisco Gutierrez the Manager of
99 the Philippine Sugar Estates Development Company order you to take up the tram rails which were laid in Calamba and all the boilers and machinery which existed there of the old plantations called Ibarra, Mayapa, Calamias, Mapagon, Siranglupa, Real and Punta?

Mr. Feria: I ask the Court that Mr. Gutierrez shall make his questions more specific because it might be that those orders were not given all at once.

Q. When did they give you the order to proceed to remove those machines and the tram rails?
A. In May 1903.
Q. Did you comply with the order from the manager of the Philippine Sugar Estates Development Company to proceed to remove those rails and machinery immediately after you received it?
A. Yes, sir.
Q. What was the first thing that you took apart and carried to the camarin of the Company in accordance with the order received from the Manager?
A. The rails at Calamba in May 1903.
Q. After taking up the rails what did you gather up and take to the camarin of the Company?
A. Ibarra's machinery which was on a lot in the town storing it in the camarin of the Company.
Q. In what condition and in what state of repair did you find the Ibarra machinery when you proceeded in 1903 to comply with the

order of the Manager of the Philippine Sugar Estates Development Company, Limited?

A. In bad condition because part of the camarin where it was had fallen on top of it.

100 Q. Was it a machine or were they loose pieces of machinery when you went to get it?

A. There was a round boiler and several loose pieces in the camarin.

Q. Were they all united forming a machine that might be used at that moment when you went to take it, or not?

A. No; they were all apart.

Q. Was the machine complete with all its pieces or not?

A. No, sir.

Q. Were there any of the apparatus or pieces of that machine missing?

Mr. Feria: I object to the question; the witness cannot answer whether or not any was missing because he is not an expert.

Judge: It is relevant.

Mr. Feria: Exception.

A. Yes, they were missing.

Q. Was the same in condition to be put to work or running at the time it was removed by you?

A. No, sir.

Q. Those pieces missing from the machine were they mere details or minor pieces or were they important ones?

A. Mr. Feria: I believe that the witness cannot tell the important pieces which were missing, the witness has said that they were loose——

Judge: It is relevant.

A. They were important pieces for the work of the machine of Ibarra. All the bronze parts were missing.

101 Q. Have you any special knowledge of machinery and in regard to sugar mills?

A. A little.

Q. Do you know what are the important pieces for the working of a sugar mill?

A. Yes, sir.

Q. Did any one of those machines which you took have any cylinders, cog-wheels, pinions, axles, etc.?

A. In all of them there was nothing but axles, none of them had the fly-wheel in good order.

Q. Did it have any cog-wheel?

A. Yes, broken and the axles too.

Q. Were there cylinders?

A. They were all broken by hammer.

Q. Were there fly-wheels?

A. Yes, broken by hammer as well as the pinions.

Q. Now then, Can a sugar mill work without having these pieces?

A. No, sir.

Q. From the Ibarra mill where did you go?

A. To the Mayapa mill.

Q. What was it that you took from Mayapa?

A. A boiler, the axles, cog-wheel——

Q. Was that machinery complete and put up together in its place?

A. The boiler was fallen to one side: the main cog-wheel was there also fallen and thrown to one side and there was nothing left but the axles.

102 Q. Were there shaft-bearings?

A. There were none.

Q. Were there any rollers?

A. Yes, but all broken.

Q. Were they near one another or not?

A. Everything was mixed up and thrown about.

Q. The rollers?

A. The same; there was none there in good condition.

Q. Were there any caldrons?

A. No; we were looking for them because the Manager told me that there ought to be; but it appeared that robbers had stolen them together with many of these pieces and had broken them into pieces, and everything was broken up——

Q. Were there not any details that might indicate that there had been a sugar mill erected there before?

A. Only the boiler.

Q. Were there any pillars of the camarin?

A. No, sir. There were no pillars.

Q. Did the furnace exist?

A. One could see that there had been a furnace there but every thing was broken and nothing could be gathered not even the bricks.

Q. From Mayapa where did you go?

A. To take a small hydraulic machine in Calamias.

Q. In what condition was that hydraulic machine?

A. In very bad condition and there I found the rollers broken.

Q. What was its size about in comparison with this table which is here in Court; can you determine what was the size of that

103 hydraulic machine?

A. It was small; there was nothing there but broken rollers and fly-wheels and pinions where this hydraulic machine was. They were the only things that existed there in the place of Calamias.

Q. Was there a camarin, bricks or anything that might indicate that there had been a sugar mill there:

A. No, there was no camarin or bricks; everything was thrown about and we went looking thereabouts and found nothing.

Q. From there where did you go?

A. To another larger hydraulic mill which was in the place of Mapagon.

Q. What was it that you found in Mapagon?

A. The rollers and roller-beds but they were all unmounted and everything fallen.

Q. Were these pieces united or far distant from each other?

A. Scattered about.

Q. Could it be seen that there had been a camarin or sugar mill there?

A. No, sir.
Q. Was there any camerin or furnace?
A. There was no camarin nor furnace; nor anything.
Q. From there where did you go?
A. To Siranglupa.
Q. What did you find there?
A. A broken boiler without fly-wheels nor cogwheels and the rollers quite broken.

104 Q. Did you find the cylinder in good condition?
A. There were no cylinders in any machine there.

Q. Is it that *there* were not there or that they had been removed?
A. I do not know whether or not they had been removed because there were no cylinders to be found and the machinery cannot work without cylinders.
Q. Did you find the pans and the rollers?
A. Not the pans; the rollers yes but broken.
Q. Were they in condition to be used at the time of their removal?
A. No, impossible.
Q. Was there a camarin or even posts that would indicate that there had been a sugar mill there?
A. No, sir; nothing existed there.
Q. Were there any pans?
A. None.
Q. From there where did you go to get something more?
A. Finally to the place of Maoumit.
Q. What did you find in Maoumit?
A. The boiler, fly-wheel, pinions, rollers, though they were all broken.
Q. Was there a furnace, camarin?
A. No, sir, there were no camarin nor pans; they had been stolen.
Q. All those boilers to which you have referred, were they in good condition?
A. No, they were fallen they had fallen on one side; none of them had any doors or chimneys.

105 Q. Why having received the order to remove all that machinery in 1903, did you take such a long time in accomplishing it?

A. Because sometimes I was in lack of carabaos for the hauling and at other times there were also quite a number of bandits in the mountains; at that time no one could do anything there because even the constables were killed and everything was paralysed for sometime and no one could work.
Q. Who are the bandits who were marauding there?
A. Montalon, Oruga; they kept on assaulting then, robbing even the constables, how could we stay there?

Mr. Gutierrez: That is all.

Redirect examination by Mr. Feria:

Q. How much did the Company pay you for taking that machinery away?

Mr. Gutierrez: This question is immaterial and irrelevant.
Judge: It is relevant.
Mr. Gutierrez: Exception.

A. I cannot give the total amount because they paid me at the rate of two pesos a day per each carabao that worked.
Q. How many carabaos worked to take the machinery away?

Mr. Gutierrez: This question is irrelevant.
Judge: The witness can answer.
Mr. Gutierrez: Exception.

106 A. I cannot say, I do not remember because those machines were taken by pieces and we went to get some and we took two and then after four or six days, we went with other carabaos to fetch another; I cannot give an estimate of the total sum.
Q. Can you tell the Court how many days you took in taking away these machines, more or less?

Mr. Gutierrez: The question is irrelevant and immaterial.
Judge: It is irrelevant.
Mr. Feria: Exception.

Q. When you took the first of these machines to the camarin, was there anything inside of the camarin?
A. Yes, two small machines, large earthen jars and some caldrons.
Q. Were there any small cars?
A. Yes, sir, those which I took and their rails.

Mr. Feria: That is all.

Judge: Call another witness.

Testimony of Charles N. Waet.

After bein- duly sworn states that his name is CHARLES N. WAET residing at Calamba, land agent or General Agent Manager of lands.

Direct examination by Mr. Feria:.

Q. What employment had you in 1906?
A. The same as now.
107 Q. Where do you reside?
A. In Calamba.
Q. Since when have you resided in Calamba?
A. Since November, 1905.
Q. Have you seen the machinery which is at present in that camarin of the Company at Calamba?
A. Yes, sir.
Q. Do you know this report?
A. Yes, this is a report made by me.
Q. Can you state what pieces you found in that camarin when you went to see it?

A. I have here an inventory made by me then with the consent of Mr. Marco who was the Administrator at that time.

Q. Using that report as a memorandum please state what you found in that camarin at that time?

Mr. Feria: I offer in evidence this report which according to the witness was made by him and I ask that the same be marked Exhibit "A" of the Government's proofs.

Mr. Gutierrez: I object to the admission of the document offered by the plaintiff, because it has not been proved that the witness is sufficiently acquainted with machinery to make a report of this kind.

Q. Have you any knowledge of machinery?

Mr. Gutierrez: I object to the question because it is leading.

Judge: It is relevant.

Mr. Gutierrez: Exception.

108 A. Very little.

Q. Can you know the pieces of a sugar mill?

A. I think I know the main pieces.

Q. When you made that report did you know the pieces which you inventoried?

Mr. Gutierrez: I object to the question. The witness has testified that he knows very little about machinery.

Judge: The question is relevant.

Mr. Gutierrez: Exception.

A. It is possible that some of them are not called by their true technical names, but I have endeavored as far as possible to give them a name which might give the necessary information.

Q. Can you tell what parts did you find, using this memorandum?

Mr. Gutierrez: I object to the question because at any rate the best evidence would be the memorandum itself.

Mr. Feria: It is a memorandum made at the time of the removal.

Q. Do you know a gentleman named Taylor?

Mr. Gutierrez: It is immaterial.

Mr. Feria: I insist that the witness shall testify in regard to the parts which he has seen.

I offer in evidence this report made by the witness and marked with the letter "A" of the plaintiff's proofs.

Mr. Gutierrez: I repeat that I object to the admission of this document in evidence for the reasons given and besides because it is nothing else but a document of the nature of a police report
109 foreign to this case. It also appears that the witness had no knowledge about machinery, and finally it is not identified.

Judge: The document offered in evidence having been identified the same is admitted as Exhibit "A" of the Government's evidence.

Mr. Gutierrez: Exception.

Mr. Feria: I desire to have it set down that I do not offer all the document but only that part containing the inventory.

Mr. Gutierrez: I object to the partial offer made by Mr. Feria. If he desires to offer it I ask that it be in whole.

Judge: The document exhibit "A" is admitted.

Mr. Gutierrez: Exception.

Cross-examination by Mr. Gutierrez:

Q. Have you seen each and every one of the parts enumerated in this report?

A. In company with Mr. Soriano.

Q. Every one?

A. Yes, sir.

Q. Each one of them separately?

A. Yes. But I had to ask Mr. Soriano the technical name of each one of them and to which machine they belonged.

Q. You had to ask Mr. Soriano the names of all those parts which are enumerated in that report?

110 A. Yes, *there* many of them, because I am not an engineer and I had very little knowledge at that time.

Q. You cannot tell of your own knowledge that either the description or anything that is said in this report is exact.

A. Not then. Since then may be that I understand something about machinery.

Q. At the time of making this report you had no knowledge of the proper names of these objects nor the purpose for which they were used?

A. Of some — them, yes; of others, no.

Q. Can you tell us specifically what parts of those which you have enumerated in this report you knew of your own knowledge?

A. Such as rollers and axles, I did know them.

Q. Outside of the rollers and axles, all the rest you knew it by hearsay from Mr. Soriano.

A. Caldrons, tubes, and I believe that some rollers, boilers.

Q. That is the only thing of your own knowledge you can now affirm that you saw there then?

A. Yes, I believe so now.

Q. You did know it at that time, did you?

A. At that time I don't think I knew it but with the help of Mr. Soriano who went with me to inspect.

Mr. Gutierrez: In view of the fact that the knowledge of the witness in regard to these machines then as now is by hearsay, I ask that his testimony be stricken from the record as well as that improperly called report.

111 Judge: The number of parts which the witness named at this moment and which he did not know of his own knowledge can be stricken out.

Q. These pieces which you said you knew, you saw them all in a heap, did you not.

A. Many of them were there in a heap and they were placed in a certain place and some parts were there and others a little farther, such as the boilers which were separated.

Q. There were several heaps of loose parts and some on top of others, is it not so?

A. Yes, such as the axles which could not be joined to the other parts which were separated.

Q. In what condition were the parts which you could see?

A. Some seemed to be in good condition and others were broken.

Q. Can you specify how many you found in good condition?

A. No, sir.

Q. Which were those pieces you found in good condition.

A. I velieve some of the axles were. I do not remember well.

Q. Which is the only thing that you remember that was in good condition?

A. Some wheels.

Q. Wheels of what?

A. Large wheels, it seemed as if they were fly wheels.

112 Q. Did you see pinions and cogwheels?

A. I cannot specify now.

Q. Is it not true that the reasons why you cannot specify anything now is due to the fact that when you went to inspect those pieces they were all in a heap and you could not see them?

A. I have forgotten it on account of the long time which has already elapsed.

Mr. Gutierrez: That is all.

Redirect examination by Mr. Feria:

Q. All of those pieces some of which you said before that you did not know, were they in the camarin?

Mr. Gutierrez: I object to the question because it is leading.

Judge: It is relevant.

Mr. Gutierrez: Exception.

A. Yes, we counted the number of pieces which I saw and we found. The exact name or the correct and technical name of these parts I cannot tell, but the number of pieces I can.

Mr. Feria: That is all.

Judge: Call another witness.

Testimony of Thomas Taylor.

After being duly sworn states that his name is THOMAS
113 TAYLOR, mechanical engineer, No. 39, Plaza Cervantes, Manila.

Direct examination by Mr. Feria:

Q. Did you examine the machines found in the camarin of the Philippine Sugar Estates Development Company, Limited?

A. Yes, sir, in Calamba.

Q. When?

A. On the 19th day of February, if I am not mistaken, of the year 1909.

Q. Can you tell the Court the parts which you found inside of that camarin, what was inside of the Camarin?
A. I saw a good deal of machinery some of which needed repair.
Q. Do you remember the parts of machinery which you saw then?
A. I did not take a detailed note of the parts.
Q. But in general?
A. I saw some which they call mill-rollers for sugar-cane.
Q. Can you tell the Court how much can those parts which you saw inside the camarin be worth?

Mr. Gutierrez: I object to the question because the witness has testified that he did not take a detailed note.
Judge: It is relevant.
Mr. Gutierrez: Exception.

A. About fifty thousand pesos.
Q. Have you examined the parts?
A. Yes, sir.
114 Q. Piece by piece?

Mr. Gutierrez: I object; the question is leading.

A. Yes, sir.

Mr. Feria: That is all.

Cross-examination by Mr. Guiterrez:

Q. You have stated in your direct examination that you did not see in detail anything of what was there?
A. I made an inventory but without saying so many machines and so many parts.
Q. All those machines and their parts were heaped up on top of one another, is it not so?
A. Some parts were in a heap and others scattered about on the ground there.
Q. How long did it take you to inspect all these machines?
A. Twenty-four hours. One half: twelve hours. I was in the town twenty-four hours.
Q. How long did you take to see these machines?
A. Ten hours.
Q. Who accompanied you?
A. Mr. Waet.
Q. Nobody else accompanied you?
A. No one else.
Q. Who opened the door to enter the camarin?
A. Mr. Waet or his agent.
Q. At what time did you start to make that investigation or examination?
A. At 6 o'clock in the morning.
115 Q. Up to what time?
A. Until 6 in the evening, except meal time.
Q. What procedure did you follow if any, to make the valuation of those machines?
A. I know the value of that kind of machinery when it is new.

Q. Then the valuation that you made of that machinery was under the hypothesis that it was new?

A. No, one half.

Q. One half of what you have said?

A. When it is new it costs about one hundred thousand pesos.

Q. How long have you been practising your profession as mechanical engineer?

A. From the year 1865.

Q. Where did you pursue your studies of mechanical engineering, if any?

A. Mirleer and Taif, sugar machine works.

Q. In what country?

A. In the city of Glasgow, Scotland.

Q. Is it not a fact that the only instruction you have had is having worked as a workman in that machine factory and in that sense you say that you had knowledge of mechanics?

A. I was also the one who designed machines.

Q. Those are the only studies in machinery that you have had, are they not?

A. I have also my appointment as first naval engineer.

Q. How many years have you been engaged working with sugar machinery?

116 A. Five years more or less.

Q. Have you dealt in this kind of machinery?

A. Yes, I had a shop on calle Reina Regente and I have made repairs in a few sugar machines.

Q. Do you know what kind of machines were those which existed in the camarin at Calamba when you inspected them, and of what make they were?

A. Some of them were manufactured by Buchanan.

Q. How many of those you saw in Calamba were manufactured by this manufacturer Buchanan?

A. I don't know.

Q. So that you do not know whether there are ten or twenty of those machines there, made by that manufacturer?

A. I know that there were not twenty machines there.

Q. How many were there?

A. Five.

Q. As mechanical engineer what do you understand a sugar mill or machine to be?

A. The sugar machine has three rollers and other necessary parts.

Q. So that you cannot state how many of those machines were of that manufacturer Buchanan?

A. I cannot say.

Q. That Buchanan factory to which you refer is it in Germany, in America or where——

A. Scotland.

Q. Can you now state positively that you have seen in Calamba even one machine of that manufacturer?

117 A. No, I am not sure of it.

Q. Of which other manufacturers were the machines

which you said were there and you inspected and valued at fifty thousand pesos?

A. I did not take notice of the name of any manufacturer.

Q. Did you take a note of the capacity of each one of those machines, their horse power, etc.?

A. No. I know more or less the size of the machines but I did not take any measure or sketch, but they are larger than the ordinary ones in this country; 20 or 22 inches in diameter and the rollers measured about four feet in length.

Q. Did you take the measurements of the boilers?

A. No sir.

Q. The pieces which were in a heap, were they subjected to an inspection by you?

A. Yes, sir.

Q. Can you specify them?

A. No, sir.

Q. Did you estimate the value of every single piece of those which were in a heap?

A. I have already stated that I did not take any detailed note.

Q. So that it did not occur to you to take down the name of the manufacturer of those boilers nor of those machines?

A. No sir, I did not do it.

Q. Do you know that boilers and machines are worth or have different prices according to their manufacturers?

118 A. Yes, but the difference is small.

Q. Have you sold in Manila at any time even one machine or boiler of the kind and trade-mark which you have seen there in Calamba, or of any other manufacturer?

A. No sir. None.

Q. Then you have never had any intervention in the sale of machines or boilers of that kind, trade-mark and factor, is it not so?

A. Yes, that is true.

Q. So that all you know about the price of those machines is merely by hearsay, is that true?

A. If you come to my office to-morrow I shall quote you prices of machines?

Q. I am speaking to you of those machines and those manufacturers which you say you saw in the camarin of Calamba.

A. No sir.

Q. You have none of that trade-mark?

A. No sir.

Q. You do not know the price at which those machines are sold?

A. No, in regard to those particular machines I do not know it.

Q. So that in regard to that particular machinery you do not know the price of the same?

A. I know the price in general of a piece of machinery.

Q. But you do not know the price of those machines and boilers which you say you have seen in Calamba?

119 A. There is a little difference between one maker and another.

Q. You as a man who makes small repairs in machinery take

only into account the cost of the loose pieces but not the whole machine, is it not so?

A. I know the exact price of the machine.

Q. If you know the price of the machine, tell me which is the exact price of one of those boilers and machines which you have seen in the camarin at Calamba according to that knowledge which according to yourself you have about machinery.

A. From twelve to fifteen thousand pesos each.

Q. That price of from twelve to fifteen thousand pesos is including the construction of a large camarin, the furnace, machine and boilers, etc.?

A. Boilers, motor, roller-beds, cylinders——

Q. With caldrons——?

A. Without caldrons.

Q. Have you sold in Manila even one single sugar machine for twelve thousand pesos?

A. (The witness does not answer.)

Q. Is there a single person in the Philippines whom you may succeed in selling one machine of the class, mark and factory which you have seen in Calamba for that price of fifteen thousand pesos?

Mr. Feria: I object to the question because the witness has already said that he has not the price list.

Judge: It is relevant.

Mr. Feria: Exception.

120 A. No sir.

Q. You have never sold any?

A. I have never sold.

Q. So that that price, that value of 15,000.00 pesos which you have given here is because you have seen it marked in a book or catalog which you have in your office?

A. It is not true, the price is not written here in this report.

Q. In that of your office?

A. No sir.

Q. Don't you say that you have a price list of those machines?

A. Of the same machines; of this kind of machinery.

Q. Of that kind little more or less?

A. Yes sir.

Q. But not of the same kind?

A. No, not of the same factory.

Q. So that all that estimate that you have made of the machines at Calamba is wholly illussory and without any basis.

A. It is exact.

Q. Don't you know that to make an estimate of anything it is necessary to know, if it is about a machinery, who is the maker, what each parts are, its power, its measurement, etc.?

A. It is not necessary. An approximate price can be given.

Q. So that all you say in regard to prices is approximately and according to your personal opinion?

121 A. Yes, according to my own opinion.

Q. Have you seen these machines mounted there?

A. I have seen them mounted and unmounted and loose parts.

Q. Which are the mounted machines which you saw and how many were they on that day you went to inspect them.

A. I cannot say.

Q. What do you understand by mounted machine?

A. Partially mounted, not wholly.

Q. What parts of those machines have you seen partially mounted if any in the camarin at Calamba?

A. The tray, roller-beds and rollers.

Q. Were they set up or were they thrown about the floor all broken up?

A. They were near one another.

Q. But they were on the floor, were they not?

A. Yes, sir.

Q. So that none was set up on its respective place?

A. I cannot remember. It is possible that they were not set up.

Q. You cannot say whether the kind of parts which you saw thrown about the floor belonged to a certain individual machine or to different ones?

A. I saw the parts of a whole machine there.

Q. How many complete machines have you seen.

A. I have not seen any complete one.

Q. Have you seen the cylinders, shaft-bearings or (main) cogwheels of any of those machines?

122 A. There were many different wheels, (main) cogwheels as well as pinions——

Q. How many cylinders have you seen in that camarin approximately?

A. Steam cylinders?

Q. Yes.

A. I cannot say now.

Q. Can you tell what was the size of those cylinders you have seen there?

A. No sir, I cannot say.

Q. Is it not true that all that inspection and examination that you say you made in Calamba, consisted in entering the camarin about two steps from the door, glancing over the boilers and parts of machinery which there were piled up and others scattered on the ground together with other parts, and without doing anything else, proceeding to appraise them in fifty thousand pesos all at once just as you could have appraised them in the sum of five hundred pesos?

A. I have a note that there were five sugar mills with their boilers and machinery.

Q. You know that according to the cylinder of a machine so its power and price varies?

A. Yes sir.

Q. They gave you the charge of making the appraisal there and you didn't take note of the cylinders nor of their capacity, nor of

the boilers, nor of the manufacturer, nor of the parts, nor of anything at all?

A. That is true. I didn't.

123 Q. Did you see any boilers there?

A. Yes sir.

Q. How many did you see?

A. I saw two large ones inside of the camarin.

Q. Only two?

A. Only two.

Q. Did you examine the inside of these boilers, did you even see the opening of the same?

A. Yes sir.

Q. If you did see tell me now how were the tubes inside?

A. I did not look inside of the boiler. I only saw the outside of the boiler.

Q. You have not seen the opening of the other side nor the tubes?

A. Yes sir.

Q. What was the size of that opening and those tubes?

A. I did not take note of the dimension.

Q. Is it not true that the boilers vary in price according to their opening and their size?

A. Accordingly, there are many things in a boiler.

Q. The price of a boiler depends from those things, from the tubes, the diameter and its capacity?

A. That is part of it.

Q. In appraising the value of boilers are you ignorant of the fact that those data are essential to determine the price such as the size of the tubes, the diameter and so forth. The dimensions of the boiler etc., etc.?

124 A. I saw the boilers but I did not take note of their dimensions.

Q. In what have you based that fabulous estimate of fifty thousand pesos for those two boilers and those other pieces which you say you saw on the ground. Have you made an examination and inventory of each and every one of the pieces which make up that value which you give them now?

A. No, but as I said before there were five mills with their machines and boilers. Of the 5 mills only three were steam mills and the other two hydraulic.

Q. How is it that not having taken note of the cylinders, shaft-bearings, rollers, etc., can you determine that those machines which you valued in fifty thousand pesos were steam and hydraulic machines?

A. I can say that the size of the rollers of the machines which I saw would approximately be one or two inches.

Q. Simply from the rollers, looking at the rollers you estimate the price of a machine and boiler?

A. Yes sir.

Q. How then have you made the appraisal of those machines not having seen as you said in your testimony but two or three cylinders?

A. The wheels of the hydraulic mill also cost money.

Q. From what you saw there you cannot tell what parts you saw and examined nor how many machines there were there, nor whether any parts were missing, nor what they had or what they lacked.

A. No, but I have already given my opinion.

125 Q. You did not base your opinion *of* the parts which you did not examine?

A. All that I have seen.

Q. You do not know now what is it that you saw?

A. I have seen machines and those parts.

Q. You have not made a detailed inventory of each and every one of the parts that were there?

A. No sir.

Q. Do you know if those machines have any pillows?

A. I do not remember.

Q. Do you know if there were any bronze parts in those machines?

A. I could not see.

Q. Is it that you could not see or that you did not see?

A. As I said before I did not *made* any detailed examination.

Q. You said that you have seen cylinders; in what condition were those cylinders?

A. No, I said before that I have not seen cylinders.

Q. So that you have not seen any cylinders?

A. I have not taken note of their dimensions.

Q. But have you seen any cylinder?

A. I believe that there were one or two cylinders thrown about there.

Q. Did those cylinders have any covers or pistons?

A. I do not remember.

Mr. Gutierrez: That is all.

Judge: Call another witness.

126 *Testimony of Maximiliano Villanueva.*

After being duly sworn states that his name is MAXIMILIANO VILLANUEVA, domiciled in Calamba, hack-driver.

Direct examination by Mr. Feria.

Q. What employment had you during the years 1903, 1904, 1905 and 1906?

A. I have no cart then. I am a foreman of Hernandez and they deal with me.

Q. What part of machinery did you remove in those barrios of Mapagon, Mayapa, Calamias, Siranglupa, etc.?

A. We brought the machines to Calamba; they were all broken up.

Q. What parts can you enumerate?

A. There were no shaft-bearings the axles were broken as well as the pinions and the boilers without bolts or doors.

Q. Specify. I do not ask for the condition in which they were but for the parts themselves?

A. The parts which were taken were almost all of them broken.
Q. Do you remember what parts have been taken up.
A. A broken boiler in Mayapa, a hydraulic machine from Mapagon, the rollers broken; we took it all to Calamba.
Q. In what condition?
A. The rollers were broken and the bearings also broken.
Q. What else?
A. The axles of the main-cog-wheel.
Q. What other pieces do you remember?
A. I do not remember any more.

Mr. Feria: That is all.

127 Cross-examination by Mr. Gutierrez:

Q. What did you take out from Mapagon?
A. The hydraulic machine.
Q. How many pieces did you take from there?
A. Three rollers, two roller-beds and a shaft.
Q. In what condition were they?
A. They were destroyed.
Q. Was there a camarin there or even furnaces and caldroons?
A. No, sir.
Q. Were there any posts?
A. No, sir.
Q. Bricks?
A, Yes, but they were all cut and broken.
Q. Were you in Calamias?
A. Yes, sir.
Q. What did you take out from Calamias?
A. The boiler and the main cog-wheel, rollers all broken.
Q. Have you seen a camarin in Calamias?
A. No, sir.
Q. Were there any caldroons or even bricks?
A. There were none.
Q. In Calamias what was there?
A. The rollers?
Q. What else?
A. Pinions and fly-wheels.
Q. What else?
A. Nothing else.
128 Q. How were these pieces?
A. All broken thrown about and we collected them.
Q. Were they all in their place?
A. They were all scattered.
Q. The teeth of the main cog-wheel, how were they?
A. Broken.
Q. Were there any roller-beds?
A. There was none.
Q. Any caldroons?
A. None.
Q. Any camarin?
A. None.

Q. Where did you go from there?
A. To Calamba.
Q. Did you go to Siranglupa?
A. I did not.
Q. Do you say that *they* were machines at Siranglupa?
A. Yes, sir.
Q. How were they?
A. They were also thrown about.
Q. Broken up?
A. Broken up; only the boiler was a little bit in repair.
Q. Was it placed in its place?
A. Up to the middle of the bricks, nothing else.
Q. Were the rest of the machines in Siranglupa in good condition?
A. No sir.
Q. The machinery of the Ibarra mill in what condition was it?

129 A. It is in the town, in a lot.

Q. When this machine was taken to the town, how was it?
A. In the time of the Spaniards Mr. Ibarra himself, its owner, took it to the lot which he had in Calamba.
Q. Have you seen afterwards all the machines and their parts and cylinders taken from the *difference* places of the hacienda and the camarin in Calamba.
A. Yes sir.
Q. How was that mill or its machinery and cylinders?
A. It was placed inside of the camarin.
Q. Piled up?
A. Everything was thrown about, nothing in its place.
Q. Were they in good condition?
A. All the main parts are broken.

Mr. Gutierrez: That is all.

Redirect examination by Mr. Feria:

Q. Was that machinery from the Ibarra mill brought inside of the camarin?
A. Yes sir.
Q. When, at the same time as the others?
A. Months before.

Mr. Feria: That is all.

Recross-examination by Mr. Gutierrez:

Q. Please specify when were these machines taken or when did they start to take them to the town; was it in 1903?
A. I do not remember well whether it was in 1903 or 1904.

130 Mr. Gutierrez: That is all.

Mr. Feria: I offer in evidence this instrument marked Exhibit "B" of the Government.

Mr. Gutierrez: I desire to state that if it is admitted it be subject to the objection which we have made of the same in our answer.

Judge: The instrument marked Exhibit "B" and offered by the plaintiff is admitted.

Judge: The hearing of the case is postponed until November 17, next, at 8 a. m.

I hereby certify that the above testimony is the faithful and exact transcription of the notes taken by the undersigned at the time of the hearing of this case.

(Signed) JULIO JIMENEZ JEREZ,
Official Stenographer.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Judicial District of the City of Manila, Part III.

Civil. No. 4953.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff,
versus
THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY and The Dominican Order of PP. Predicadores of These Islands or The Provincia Del Santisimo Rosario de Filipinas, Defendants.

131 Hearing on the 17th Day of November, 1911.

EVIDENCE OF THE DEFENDANTS.

Testimony of D. Francisco Gutierrez Repide.

After being duly sworn states his name to be FRANCISCO GUTIERREZ REPIDE, President of the "Philippine Sugar Estates Development Company Limited."

Direct examination by Mr. Gutierrez:

Q. Have you any knowledge that there was in Calamba in the year 1903 any machinery belonging to the Company which you represent?

A. Yes, sir.

Q. What orders did you give in regard to those machines, if any?

A. About the beginning of the year 1903 I gave the order to take from the field all the machines and tram rails which the Company had. This order could not be complied with at once and after repeated demands from me, our agent Don Inocencio Hernandez, after an official letter which I wrote him and which he presented to the military authorities in Calamba, the tramway was removed in the month of May 1903, and later, as the circumstances and the number of carabaos of which Mr. Hernandez could dispose for the hauling of the machine, allowed, these were also removed.

Q. Is this the letter by which you ratified this verbal order to Mr. Hernandez which I now show you?

A. Yes, sir.

Q. This book where this letter appears, what is it?

132 A. The letter copy book of the Company.

Q. Is it sealed by the Justice of the Peace?

A. Yes, sir.

Mr. Gutierrez: I offer in evidence this letter which is found at folio 160 of this letter copy book of the Company and I ask that the letter itself be marked Ex. "1" of the defendant Company.

Judge: The letter is admitted as Exhibit "1" of the evidence of the defendant.

Q. Was that order made extensive to the machinery?

A. Mr. Feria: I object to the question because it is leading.

Judge: Change the form of the question.

Q. Did you give any other order related to anything referring to the machinery?

A. Simultaneously with the order I gave at the beginning of 1903 to remove the tram-way, I ordered the machinery to be also removed. It was necessary to have the order to remove the tram-way given in writing, because the military authorities in Calamba who were in control of the town were using the same, and for this reason I say it was necessary to give that order to remove the tramway. As there was no one using the machinery or objecting to its removal the order as to the same was verbal. And immediately after the tram-way was removed they proceeded to remove the machinery starting with one which was in the town, in other words, Iberra's.

Q. When you gave this order to remove the machinery which was in the field and that tram-way which was being used by the

133 military Government for military purposes, did the same belong to the Company or not?

Mr. Feria: I object to the question because it tends to contradict the contents of an instrument — which is attached to the complaint.

Judge: It is relevant.

Mr. Feria: Exception.

A. Yes, they belonged to the Company.

Q. At the beginning of December of the year 1903 did they still belong to the same Company?

A. They did not belong or continue to belong to the Company any more since the sale agreed upon in October 1903 with Don Enrique Rueda was perfected.

Mr. Feria: I ask the Court that as to all these questions which tend to contradict the instrument the same objection be considered made as well as the exception taken by me before.

Judge: Notice is taken.

Q. Those estates where those machines and that tramway were located, were they made the object of a transfer on the part of the Company or did the Company made a sale of the same to the Government?

A. Yes, sir; in October 1905. *In* October 20th, the final conveyance was made of the Estates.

Q. On what date was the preliminary agreement of sale signed with the Government?

A. On December 22nd, 1903.

Q. That which was sold to the Government or which the Government bought from the Company was it made the object of *an* special appraisal by an expert employee of the Government?

134 A. Yes; the different lands owned by the Company were appraised and classified, itemizing the buildings, the improvements and the quantity of the lands which was set forth in the communication with the Hon. President of the United States William H. Taft, the Governor then of these Islands sent me, and so it appears in the report of the commission. There appears definitely enumerated how many hectares were first class, how many second class, how many third class, how many fourth class, what houses were sold and what camarines; everything detailed, appraised and itemized in that list.

Mr. Gutierrez: I offer as evidence this appraisal made by Mr. Villegas by order of the Government of the Estate called *of* Calamba, Exhibit "G" appearing at page 199 of the report of the Commission, Vol. 19, year 1903 and by which it is seen that the machinery in question was not appraised.

Judge: This evidence is admitted.

Q. Did anything exist in that Estate which was not appraised in this report made by Mr. Villegas?

A. Yes, there were camarines and houses which were not appraised by Mr. Villegas.

Q. Only camarines and houses?

A. And the machines. To all of which I made reference in my interviews with the Hon. Governor Mr. Taft, as it appears in the official report of the Commission and the stenographic notes which were taken of the said interviews.

Q. Those machines to which you have referred as not having been appraised which were they?

135 A. Amongst others, those which are the subject matter of this suit.

Q. That property of the Company consisting in camarines, houses and machinery which were not appraised in that special appraisal, what became of it?

A. When the moment arrived to execute the deed of sale with the Government I remarked that the property was not included and for some of it, such as the camarin of Biñang, by agreement with the Government, I was paid 15,000 pesos more and the Government took it. The others, such as the house of Calamba and the camarin of Orion, the Company reserved to itself and continue to be our property because they were not appraised nor included in the sale.

Q. And the machines?

A. They had been excluded long before the sale when this matter was discussed, because the machines had been sold in October, 1903,

to Don Enrique Rueda just as in that year I had also sold to several persons several parcels of land and lots of the Company which were not included either.

Q. Were these parcels also excluded from the sale to the Government?

A. Yes, sir.

Q. Were there two contracts executed in regard to this sale?

A. Yes, sir, the preliminary agreement which was signed on December 22, 1903, and the final deed on the 20th of October, 1905.

Q. You say that you were the one who signed the first contract, the preliminary agreement with the Government?

136 A. I was the one who made all the dealings in regard to the sale with the actual President of the United States, Hon. William H. Taft; he and I exclusively.

Q. The final deed of sale, by whom is it signed?

A. By you, Eduardo Gutierrez, who substituted me during my absence in the United States.

Q. That preliminary agreement which you signed was the one which served as basis for the final deed of sale to the Government?

A. Yes, sir.

Q. Before signing that preliminary agreement did you receive from any person of the Government a draft of the same?

A. Yes, sir. On the 18th or 20th of December, 1903, in an interview which I had with the Hon. Governor General Mr. Taft, he handed me a draft of the preliminary deed of sale which we were both to execute one of those days, which document was modified and corrected as to some particulars at my request.

Q. What is this document which I now show you?

A. This is the draft of the preliminary agreement to which I refer and which was handed to me by the Hon. Governor General and in which, as it can be seen, I made certain corrections which were accepted by the Government and were taken note of in the one which was later signed.

Q. Please tell me why in this draft of the preliminary contract handed to you by the Hon. William H. Taft, there appear the words sugar and rice mills and machinery stricken out and the same words do not appear in the document which was signed between the Government and yourself?

137 A. This is, I repeat, the draft of the Government which was handed to me by the actual President of the United States, Hon. William H. Taft, and as soon as I saw this about sugar and rice mills and machinery, I told Mr. Taft to strike it out and to remember that in prior discussions we had agreed that the mills or machines were not included in the sale, for the reason that not having been appraised by Villegas, they had been sold by me before to Don Enrique Rueda.

Before this time I made these statements to Mr. Taft, I remember that the last discussion I had with all the members of the civil Commission sitting in session, formed by Messrs. Taft, Ide, Wright, Smith and Legarda on December 16, 1903, the discussion in regard to several particulars of the sale, lasted two hours. During the course

of that discussion Commissioner Smith asked me if the mills or machinery were included in the sale and I repeated what I have so many times told Mr. Taft and was confirm- by him that the mills were not included in the sale, because they had already been sold to Don Enrique Rueda for reason that they had not been appraised by the Government's expert. That is why this draft was amended in that part which relates to the mills besides the other amendments introduced in the same.

Q. That which appears crossed out in this document regarding the mills and other things, does it appear in the preliminary instrument signed by Mr. Taft and yourself?

A. No, sir; they were suppressed for the reason which I have just given.

Mr. Gutierrez: I offer in evidence this document marked Exhibit "2" of the proofs of the defendant Company.

138 Mr. Feria: I object to the admission of this paper because it is nothing but mere scrap of paper and it is absolutely irrelevant.

Mr. Gutierrez: Judge, this was the draft, as you have heard, handed over to Don Francisco Gutierrez by the Hon. Mr. Taft, in which the modifications asked by him were made, omitting the phrases regarding mills and other things appearing therein and it is sufficient to compare it with the original to see that said words do not appear in the latter.

Q. Besides these changes in regard to the machinery, are there any other corrections?

A. Yes, there are many.

Judge:

Q. This draft with the amendments appearing therein, is it a faithful copy of the preliminary deed of sale which you signed?

A. Yes, sir.

Judge: The document Exhibit 2 offered by the defendant is admitted in evidence.

Mr. Feria: Exception.

Q. After the date of the preliminary contract to which reference has been made, has any other document been signed or executed in which you may have intervened?

A. Yes, sir.

Q. Will you tell us what is this certified document which I now show you?

A. It is a certified copy of the stenographic notes taken of one of the interviews which I also had with the Hon. Governor General of these Islands, Mr. Wright, on which there appears that the

139 drafts of the final deed were handed to me and I refused to accept some of the paragraphs thereof and where it also appears in a word all that we spoke at that interview in regard to the deed of sale of these Estates. In it, it is seen that I objected again that in the final deed of sale it should be stated that we sold the sugar mills for the reason that these sugar mills could not be included in

the sale because they have been already sold prior to the preliminary contract.

Mr. Gutierrez: I offer as evidence of the defendant Company, marking it Exhibit "2," this copy certified by the Executive Secretary of those interviews which were held and wherein there appears everything that was said in regard to that deed of sale.

Mr. Feria: I object to the admission of this document in evidence for the reason that it is wholly irrelevant. This conference was held on August 24, 1906, after the preliminary contract had been executed.

Judge: The objection is overruled and the document is admitted as Exhibit "2."

Mr. Feria: Exception.

Q. This deed to which reference is made in that interview, have you seen it afterwards?

A. Yes; I have seen the final deed from which the words machines and sugar mills are excluded as I demanded again in that conference.

Q. Please state if you had had any chance to see those machines?

A. Yes; several times; after they were sold to Mr. Rueda.

Q. In what condition were those machines when you saw them?

140 A. They were completely spoiled and all their main parts destroyed; there was none that could work.

Q. Were they mounted so as to be fit for work?

A. No; they were all scattered throughout the different places where the mills had been originally.

Q. Were there any camarines?

A. No; they had disappeared. The cooking-stove and the refractory bricks of the furnaces had disappeared.

Q. They claim in this complaint a mill which is said to be a steam mill and which is located in Real, will you tell us to whom did that mill belong?

A. That mill is not a steam mill; it is a hydraulic one, mounted in the place called Real and it forms part of the parcel of land which the Company reserved to itself and was within the property belonging to the Company.

Q. Are there any others in the same condition?

A. That of Maoumit is in a land reserved by the Company and was not included in the complaint. Later on, and already here at the trial Mr. Feria has included it by an amendment to the complaint.

Q. Will you please state if you delivered that machinery to Mr. Enrique Rueda as purchaser thereof?

A. I could not deliver that machinery at the time it was sold on account of the special abnormal conditions in which Calamba was found and which did not allow to go out in the fields every day in 1903, the time in which the sale was agreed on. Until 1906 the hauling of this machinery to Calamba could not be finished and at that date Mr. Rueda, on account of wishing to return to

75

141 Spain and by reason of the fact that the Company had not been able to comply with its offer to make delivery of the machines to him, requested me to rescind the contract. Considering the extremely just reasons of Mr. Rueda as well as the pitiful condition of the machinery which we had sold him without having seen the same and in the belief that it could be used, I had no objection to rescind the contract.

Q. Was that contract of sale to Mr. Rueda and its rescission made in writing?

A. We made no written contract because it was sufficient guarantee for me the words of Mr. Rueda and his undisputable chivalry. But by a letter a copy of which appears at the Company's letter copy book I sold Mr. Rueda the machines of the Company and the tramway. The letter is dated October 8, 1903, and in it I ratified in writing what we had agreed verbally.

Mr. Gutierrez: I offer in evidence this letter, the copy of which is to be found at page 189 of the defendant Company's letter copy book.

Mr. Feria: I object to the admission of that letter in evidence as well as to all this evidence because I believe that all of its is irrelevant and worthless.

Judge: The objection is overruled and the evidence offered by counsel for the defendant Company is admitted.

Mr. Feria: Exception.

Mr. Gutierrez: That is all.

Cross-examination by Mr. Feria:

Q. Did you give the order to remove these machines *in*
142 the same date that you gave the order to remove the cars of the tramway?

A. Yes, sir; I ordered the removal of all the property of the Company, not only of the machinery but also of the cars and every thing that was scattered there.

Q. That purchase made by the Government of the Camarin at Biñang, does it appear in any written instrument?

Mr. Gutierrez: That question is wholly irrelevant because nothing about the camarin at Biñang is discussed here.

Mr. Feria: Here it is said that some parcels have been excluded, and in regard to the camarin at Biñang I want to know if the purchase of that camarin has been set down in writing.

Judge: It is relevant.

Mr. Gutierrez: Exception.

A. Yes, in the instrument it must be stated that the camarin was sold too, although it was not appraised in that appraisal introduced in evidence; however it was included in the sale because it was paid for separately.

Q. Does it appear in the deed?

A. It must appear; I do not remember, but it must appear in the deed of sale of the Biñang estate.

Mr. Feria: In that case I ask the Court to strike out all that
143 the witness has testified and in regard to the camarin of Biñang, since that appears in a document.

A. To what document do you refer?

Q. To the document where the purchase of the camarin at Biñang appears.

A. Each Estate has a separate and distinct deed, and in regard to the Biñang estate I was paid 15,000.00 pesos more because the Government thought convenient to have it. In the deed by which the estate, together with the camarin and the house was sold, the camarin not having been appraised by Villegas, it was included later and I was paid 15,000.00 pesos more.

Q. Was that for the camarin or for the house?

A. For the camarin at Biñang, they gave me 15,000.00 pesos and then it was included in the sale, just as in the sale of Calamba, the camarin was not included and it was excluded, as they excluded the house of Mapagon and the camarin at Orion which, not having been appraised, were excluded.

Mr. Feria: I insist that all the testimony of the witness in regard to this matter be stricken out because it appears in a document.

Judge: The motion to strike out is denied.

Mr. Feria: Exception.

Q. Is it not true that these parcels which you say were excluded, are those which appear in each document finally executed?

A. The real property which was not appraised was not included.

144 Q. I refer to the parcels of land, whether or not they appear in a document?

A. Yes, sir.

Q. How many conferences or interviews had you with the Hon. Governor General in regard to the exclusion of these mills or machinery to which you refer?

A. As it appears in the Report of the Commission, I do not know whether in May or June, the beginning of the discussion with the Hon. Governor Mr. Taft was in reference to the appraisal and there we were checking up what was the subject matter of the sale because he pretended to acquire all and I objected tenaciously. In the first place the machines were excluded and then, as I said before, in a meeting which was held at the Ayuntamiento presided by Hon. Mr. Taft, and—which the Honorable Gentlemen whom I have mentioned before were present, Mr. Smith in particular, again brought up the question of the sale of the machinery to the Government and I answered him in the presence of all those Honorable Gentlemen that the machinery was excluded from the sale because it had not been appraised and had been sold by me to Mr. Rueda. Then came the delivery of the draft of the preliminary deed of sale which they wanted to sign and I struck out as we proved before, the words sugar and rice mills. This was accepted excluding them from the sale and one year later when I was handed the purported final contract I saw

in it the same words and I again discussed with the Hon. Governor Mr. Wright, to have them stricken out, as it is proved by that stenographic notes and then, that part which stated that the sugar and rice mills were sold was stricken out because we did not own them any more.

145 Q. When was the first time that you discussed this question of having the machinery in question considered excluded from the sale?

A. I do not remember now the exact date, but I think that it was in the month of December 1903, when Mr. Taft and I had the discussion.

Q. What month?

A. December I think, about the beginning.

Q. The first time?

A. Yes, when he already accepted the conditions which I made.

Q. Who were present?

A. Nobody, Mr. Taft and I; but later on, precisely on the 16th day of December, when several other matters were discussed before the whole body of the Commission, then, I said, on the 16th of December, it was when Commissioner Smith asked me whether or not the sugar mills and machines were included in the sale and I told him no.

Q. At that first interviews were not there other persons present besides Mr. Taft and yourself?

A. And the Interpreter.

Q. Who was the interpreter?

A. I do not remember whether it was Mr. Fergusson (or not).

Q. In that particular conference which you held with Mr. Taft, was not there any stenographer?

A. At that conference which the Hon. Governor General Mr. Taft had with me, there was a stenographer and the interpreter was there also.

146 Q. When this matter was discussed with the Commission, who were present?

A. The Hon. Mr. Taft, Hon. Mr. Wright, Hon. Mr. Ide, Hon. Mr. Smith and Hon. Mr. Legarda; they are those who were present.

Q. Was not Mr. Worcester there?

A. I believe that he was absent and did not attend.

Q. Was not Mr. Luzuriaga there?

A. He was not present either.

Q. So that at that time only those Commissioners who are not now in the Philippines, attended?

A. I do not know if there is someone——

Mr. Gutierrez: I object to the question because it seems an impeachment of the witness's veracity which——

Mr. Feria: I withdraw the question.

Q. Where were you in the year 1904?

A. In many places, I traveled a good deal in 1904, I went around the world in 1904. I was in India, Hongkong, Japan, United States, Germany, England, etc.

Q. In 1905, when this final deed of sale was executed, where were you?

A. At that time I was in the United States.

Q. How long had you been in the United States when that deed was signed?

Mr. Gutierrez: I object to the question; it is wholly irrelevant; it was drafted in 1904 and what we discuss now is whether the deed signed in 1905 was the same as that drafted in 1904.

147. Mr. Feria: It was executed on October 20, 1905.

Q. How long had you been in America when the final deed of sale was executed?

A. I cannot specify but may have been about three or four months. I held some conferences with Mr. Taft when he was Secretary of War, of which conferences the newspapers gave an account.

Q. And you left Don Eduardo Gutierrez as your Attorney in fact here?

A. No; the Company appointed him later to execute the deeds.

Q. As representative of the Company?

A. Yes sir.

Q. To execute this contract?

A. Yes, sir.

Mr. Feria: That is all.

Judge: Call another witness.

Testimony of Don Juan Castell.

After being duly sworn states that his name is JUAN CASTELL, engineer.

Direct examination by Mr. Gutierrez:

Q. Have you any machine shops?

A. Yes, sir.

Q. Have you examined certain machines which are in the town of Calamba?

A. Yes, sir.

Q. Why have you examined those machines and by whose order?

148 A. By order of the "Philippine Sugar Estates Development Company, Limited."

Q. Did you make a careful examination of those machines?

A. Yes, sir.

Q. Did you take the details of each and every one of them?

A. Yes, sir, although it was difficult, because there are things (there) which do not belong to those machines and many other things which were all mixed up there and it took a good deal of work to make the appraisal well.

Q. Did you make any report of what was there in Calamba?

A. Yes, sir.

Q. Is this the report you made?

A. Yes, sir.

Q. Did you make an itemized appraisal of each and every one of the machines?

A. Yes, sir; of the exact value of all.

Q. Where do you get the value from?

A. From my experience.

Q. What experience have you in regard to machinery?

A. Twenty-five years.

Q. Have you been engaged in selling this kind of machinery?

A. I have been engaged in selling this kind of machinery for about ten years.

Q. Does this report which I now show you contain the exact value of each and every one of these machines which are now found at Calamba?

149 A. O Yes, sir.

Mr. Gutierrez: I offer in evidence this report to which the witness refers, marking it Exhibit "4" of the evidence for the defendant Company.

Mr. Feria: I object to the admission of that report in evidence. The witness has examined and appraised these machines last month. Since 1904 up to this date, how can he know the changes which may have occurred in the machinery placed in the camarines and which is the price of those machines, even if he had all its pieces after being removed from the Estate, after such a long time transpired since they were placed there? Any appraisal made in regard to the deterioration of that machinery from that time up to the present, is wholly irrelevant.

Q. In what condition have you found this machinery?

A. Wholly destroyed.

Q. Does that destruction originate in your opinion from a recent date?

A. No. It has been broken or destroyed a long time.

Q. Is the deterioration of these machines caused by the normal work of the same or is it due to a cause foreign to their work?

A. Due to causes wholly foreign to their work, not the work of the machines.

Q. To what foreign cause can you attribute it?

A. It is impossible to say how a machine can be broken and put in the condition in which these machines are, unless it is done intentionally. In my opinion they have been broken by the
150 use of explosives because there are pieces which weigh more than four tons and are totally broken.

Q. And could have not they been destroyed by any other means except by explosives?

A. I have no other opinion but that they have been destroyed by the use of explosives.

Mr. Gutierrez: That is all.

Cross-examination by Mr. Feria:

Q. Have you examined each piece of that machinery separately?

A. More or less in detail, yes sir. I have taken the measurement of the parts lacking in the machines and of those pieces which are mixed up and which should be placed in the machines and I have not found one complete machine but loose pieces which should belong to each machine.

Q. Who went with you when these machines were examined?

A. Mr. Gutierrez.

Q. How long were you examining those pieces?

A. From 8 o'clock in the morning until one in the afternoon and then until six.

Q. Without taking a rest?

A. Without taking a rest except at meal time.

Q. Did you take the measurement of those pieces?

A. Yes, of every thing and as to the horse power of these machines.

Q. What is your occupation at present?

A. Engineer, Manager of the shops of George Taylor.

151 Q. What works is done at that shop?

A. The repairing of all kinds of machinery and boiler-; the making of new machines, purchase and sale of machinery. Everything that pertains to machinery.

Q. Do you know of what make were those machines which you examined in Calamba?

A. Of some of them, not of the others, because they had no mark, it had been taken away.

Q. Why can you not say of what factory was made that machinery?

A. Because some of them had no mark.

Q. Have you sold machinery of that kind?

A. Yes, sir.

Q. Of the same kind?

A. For milling sugar, yes sir.

Q. Of the same horse power?

A. They are not as large as these, but I have made quite a number of estimates to sell machines as large as these.

Q. How many machines did you examine in Calamba?

A. Four steam ones and two hudraulic machines.

Q. Those steam machines, how much might they cost new?

A. Placed here now or in the old Spanish time? Because there is a great difference between that time and the present.

Q. My question is how much could the machinery cost in the year 1904 or 1905.

A. With the boiler about 9 or 10,000.00 dollars gold each.

152 Q. And the hydraulic machine?

A. About 3,000.00 pesos.

Q. How much might it cost to repair those machines to make them work, in the condition which they are now?

A. It is impossible to repair them; I do not think it is worth while to repair those machines; they are all quite broken.

Q. You say that it is impossible to repair them?

A. Yes, it is impossible to repair them.

Q. About buying the missing parts?

A. It would cost more than a new machine because they are so old fashioned that the makers do not think to have the means to be able to make the pieces of the same machine because there is quite a number of improvements to day and much better machinery and it is not absolutely worth while to spend money to repair old machines.

Mr. Feria: That is all.

Judge: Call another witness.

Testimony of Don Antonio Campos Rueda.

After being duly sworn states his name to be ANTONIO CAMPOS RUEDA, merchant.

Direct examination by Mr. Gutierrez:

Q. Do you know Don Enrique Rueda?

A. Yes, sir.

Q. What relation is he to you?

153 A. He is my uncle and also my co-partner.

Q. Do you know Don Francisco Gutierrez?

A. Yes, sir.

Q. Are you a partner of Enrique Rueda & Co.?

A. Yes, sir.

Q. Have you had any knowledge of any negociations made by your firm with Mr. Francisco Gutierrez as representative of the "Philippine Sugar Estates Development Company, Limited"?

A. Yes, I know something about that. I have had in my hands letters or papers referring *a* private business of my uncle Mr. Enrique Rueda with Don Francisco Gutierrez.

Q. About what?

A. About the purchase of some machinery which I believe was in Calamba and which the Company has in Calamba.

Q. Do you remember in what year those negociations took place?

A. I am sure it was about the end of 1903. I can not specify the month, but I know it was about the end of the year.

Q. Do you know if that business was completed later?

A. No sir; it was not completed.

Q. Why was it not completed?

A. It was not completed because when my uncle was about to leave for Europe in the month of July, 1906, and Mr. Gutierrez, not having been able to make delivery of machinery which afterwards appeared to be broken, my uncle begged him to rescind the contract which they had, my uncle and Mr. Gutierrez. Mr. Gutierrez

154 had no objection to grant my uncle's request; there must be a copy in the private letter copy book of my uncle, but I believe that something was written by Mr. Gutierrez by which the contract of sale of the machinery was cancelled because said machinery was not in condition to be used.

Mr. Gutierrez: That is all.

Cross-examination by Mr. Feria:

Q. How did you know and how did you become acquainted with those transactions to which you have just referred?

A. I was constantly with my uncle and I worked in the same office continuously, in the same house, and we spoke all day about the business. Besides, amongst the papers in the office, I could see those letters regarding that matter.

Q. All you know about the machines you know it because you were in constant touch with your uncle?

A. Yes, sir.

Q. And you are acquainted with all transactions by your conversations with your uncle?

A. Yes, sir.

Mr. Feria: I ask the Court to order that all the testimony of the witness be stricken out because it is hearsay.

Redirect examination by Mr. Gutierrez:

Q. Have you had any occasion to hear anything related with this matter of the sale of these machines?

A. Not only heard but I have had in my hands letters and papers; I do not know whether it was to place them on file when
155 my uncle was about to leave, but I have had in my hands letters from Mr. Gutierrez addressed to my uncle referring to this matter.

Q. Has any conversation been had in your presence in regard to this matter?

A. My uncle spoke to me.

Q. Only in that way or in any other way?

Mr. Feria: I object to the witness testifying about statements made by his uncle and not of his own knowledge about this matter.

Judge: Let the witness testify as to what he knows of his own knowledge.

A. I said from the beginning that I have had in my hands and I have read letters regarding this sale and the rescision of the contract of sale of the machines.

Q. Outside of those letters, have you had any other knowledge?

A. By reference.

Q. By whose reference?

A. My uncle's, I have heard him speak with Mr. Gutierrez several times.

Recross-examination by Mr. Feria:

Q. Where are those letters?

A. I believe in the private letter book. This business was a private business of his own.

Q. How many letters were *they*?

A. Two letters as I remember.

156 Q. Do you remember the dates of those letters?

A. The last was dated about the end of April or June because they agreed to rescind the contract when he was about to leave, it must have been about the end of April 1906.

Q. What did he say in those letters, whose letter was that?

A. Don Francisco Gutierrez's.

Q. What does the letter say?

A. I do not remember the text but in substance it said that he consented in the name of the Company which he represented, to rescind the contract of sale of the machinery which he had sold to my uncle in Calamba.

Q. Were those letters written by Francisco Gutierrez to your uncle?

A. Yes.

Q. What is the date of the first letter?

A. About the end of October or the middle of September 1903.

Q. What year?

A. 1903.

Q. December?

S. No, sir; before.

Q. Whose letter was that?

A. Don Francisco Gutierrez's.

Q. Addressed to your uncle?

A. Yes, sir.

Q. Can you tell the Court what (it) that letter said more or less?

157 A. Confirming the sale of the machinery in Calamba.

Q. Was the letter long or short?

A. Short.

Q. You have not seen any letter from your uncle to Don Francisco Gutierrez?

A. I do not know if there is any copy in the house.

Q. Have you seen any letter from your uncle to Don Francisco Gutierrez?

A. No sir.

Q. You say you were a partner of your uncle?

A. Not in that business, but in the general business.

Q. You were always in touch with your uncle in all kinds of business?

A. Yes, sir.

Mr. Feria: That is all.

Judge: Call another witness.

Testimony of Don Eduardo Gutierrez Repide.

After being duly sworn states his name to be EDUARDO GUTIERREZ REPIDE, living at calle San Luis No. 430, Ermita, Manila, and his profession Attorney-at-law.

Mr. Gutierrez: I testify that in the year 1904 by reason of the departure of my brother Francisco Gutierrez from the Philippine

Islands, I was commissioned to continue before the Insular Government and in the name of the "Philippine Sugar Estates Development Company, Ltd." the negociations of sale which the latter had pending with the said Government in case that this Government should not insist in making certain changes in regard to the price and to the measurement of the estates which changes it tried to introduce in the preliminary contract signed by the Hon.
158 William H. Taft and Don Francisco Gutierrez. For this reason I had occasion to examine the models of the instrument which had been presented by the Government to my brother for him to sign prior to his departure from the Islands and the clauses of which had been the subject of long discussions with Don Gregorio Araneta and Don Rafael Del Pan, which discussions had sometimes taken place in the presence of the Honorable Governor General Mr. Wright.

Those models of contract discussed at that time by the above mentioned gentlemen and my brother, were the same which were afterwards signed by me as acting General Manager of the Company by virtue of the powers granted to me by this Company the day before the signing thereof.

Amongst the deeds signed by me there was the deed of sale of the Calamba Estate which is now the subject matter of this suit and in which they incorporated as a first description of the boundaries and area of said Estate a certain description which was taken from an old title of that same estate.

It was not the intention of either the Honorable Mr. Wright, as the representative of the Government, or of myself, who was acting as the Attorney in fact of the vendor Company, that in incorporating this description appearing in this deed, and which, I repeat, was taken from an old title of the Estate said description should be taken as the standard description or that the same should indicate or describe the whole or part of what was sold; no; our intention was only to set forth that description which was
159 found in a title deed already registered in the Registry of Property, so that it could serve as starting point or as a basis for the identification of said property in regard to the old boundaries of the same.

That is precisely why immediately after that old description the other one made by the engineers and surveyors of the Government of the Islands, is set forth, it being stated in the deed that this last description is the true and exact one because it had been made recently prior to the sale and in it nothing is mentioned of what is said in the first description.

Both Governor Wright and myself knew perfectly well that much of the property which appears as existing in the Estate and which is described or mentioned in that first description taken from the old title deed, did not exist any more at the time the sale was made, either because it had — destroyed or disappeared or else because it did not belong at that time to the vendor Company.

When it was later on set down in the body of the instrument that the sale included that of the buildings, irrigation works, water rights,

building lots and other improvements and accessories which might exist in the Estate or property sold and conveyed by that deed, it was not the intention of the representative of the Government nor mine either, to consider as included in the sale that which did not belong to the Company as was the case with many improvements which belong to other private persons, amongst them, a large amount of machinery different from these, houses and camarines, fences and buildings lots located within the town of Calamba.

160 All these things, I repeat, were given the name of improvements, but it was never the intention of the parties when this document was signed that these houses, camarines, building lots or sugar mills should be included, but only those which should belong to the Company and over which this Company had or might legally exercise any right *or* action.

So that notwithstanding the fact that in that first description which appears in the instrument the sugar mills or machines which are the subject matter of this suit, are described as existing in the Estate, it was never the intention of Governor Wright as the representative of the Government nor was it my intention either, to consider, the same as included in the sale. And I repeat that it was not the intention of either of the parties to include under the word improvements all those which existed in the Estate sold, amongst which are comprised machines, store rooms, and buildings, which, as they did not belong to the Company were, of course, excluded from the sale.

This, I repeat, was the intention of the Governor General and the intention of this witness as the representative that he was at the time of the sale, of the "Philippine Sugar Estates Development Company, Ltd."

Furthermore, and aside from the fact that this matter of the machinery had been already discussed and agreed upon by my brother, first with Honorable William H. Taft and with Governor Wright, I myself, some time after signing the final deed of sale, had some conversation with said Honorable Wright about these machines or sugar mills and in regard to other building lots which had been excluded from the sale because they had been sold

161 by the Company prior to the date when the first preliminary contract was subscribed. That is all.

Mr. Feria: I ask the Court to note my objection and exception to all this evidence introduced, as well as to the testimony given by Mr. Eduardo Gutierrez as a witness in this case.

Judge: It is noted.

Cross-examination by Mr. Feria:

Q. How long a time elapsed from that conference you had with the Honorable Mr. Wright in regard to these machines until the final deed was executed?

A. The negociations for the final sale of those estates began in August 1905, by reason of the arrival in the Philippine Islands of the Honorable William H. Taft, who was already Secretary of War at

that time, Mr. Taft arrived in August and the negociations started immediately. And that conversation I had it with them during the lapse of time from August when Mr. Taft arrived, who was the first person with whom I had occasion to speak about this matter, and the month of October when Governor General Wright and I spoke about these machines, by reason of the conditions then existing at Laguna Province where the bandit Oruga was encamping. We spoke, because I told the Governor that having gone to Calamba some days before to hasten the removal of these machines excluded by us from the sale and priorly sold to Mr. Rueda, while I was going through one of the places where one of the machines was lay-
162 ing on the ground, I came very near being caught by the notorious Oruga.

And so, speaking about the bad condition reigning in Calamba, we spoke of the machinery of the Company which was excluded from the sale, and of several other things, and I believe that we even spoke about some building lots which were likewise excluded.

Q. How long ago?

A. I think it must have been some days before the sale.

Q. About how many days more or less?

A. I cannot testify how many days, because it is years ago that happened, but I do know that we spoke about those machines and that they were excluded from the sale because they were already sold to Don Enrique Rueda.

Q. Who were present when that conference took place?

A. Mr. Marple and I went together to all the conferences. We were the two members of the firm who had sole intervention.

Q. And on the part of the Government?

A. Mr. Wright.

Q. Do you know if there was any interpreter?

A. Mr. Marple needed no interpreter.

Q. You said that only you, Mr. Marple and Mr. Wright were present at those conferences?

A. Not in all of them; there were some, very few, where Messrs. Del Pan and Araneta were also present.

Q. Those times you had conferences with the Honorable Governor General Mr. Wright about these machines, only you and Mr. Marple were present and never Mr. Araneta?

163 A. When the subject of these machines was treated in particular—I cannot remember at this moment whether there was any other person present but Mr. Marple and myself. In regard to other matters related with my personality for the execution of this deed, Mr. Araneta was sometimes present, other times it was Mr. Del Pan, on other times I think the Secretary of War, Mr. Wright and the entire Commission were also present There have been many conferences, Mr. Feria, and it is not possible for me to remember in detail what persons were present at each one.

Q. How many times more or less did you hold any conference with Mr. Wright in which you spoke of this machinery?

A. I do not exactly remember if we spoke more than once. One of the times I remember was when we spoke about Oruga and it seems

to me that we spoke again when we discussed the matter of the parcels sold by us in Calamba and Biñang to several private persons before this sale.

Q. At some of these conferences in which you and Mr. Wright spoke about that machinery was any other person present such as Mr. Del Pan or Mr. Araneta?

A. At that conference wherein we spoke of this matter I have already said that I do not remember.

Q. At other conferences in which you spoke of other matters, were there any other persons present besides Messrs. Del Pan and Araneta?

A. When some question came up in connection with my personality we first discussed it with the Governor and then he would tell us to go to Mr. Araneta's office in order to come to an agreement and then we would discuss the matter with Mr. Araneta and Mr.
164 Del Pan in the office of the Solicitor General.

Q. How many conferences more or less had you wherein other persons were present such as Messrs. Del Pan and Araneta and treating about other subjects?

A. In the presence of the Governor General?

Q. Yes.

A. In the presence of the Governor General I do not remember. Once, two days after Mr. Taft's arrival, at which there were present not only Mr. Marple, Mr. Hartigan and myself, but also the Solicitor General, Don Gregorio Araneta attended the meeting, and Mr. Del Pan afterwards; there came several more and finally when the deeds regarding those estates were delivered.

Q. When you had the conference with Mr. Wright had the final deed of sale of 1905 not yet been drafter or executed?

A. It had already been drafted a year before; this instrument which I signed later was drafted in the year 1904.

Q. The instrument has not been changed at all?

A. There was a change made in regard to the price, because the Government maintained that the estate had a smaller area and smaller dimensions than those which had been recorded in the preliminary contract.

Q. And that conference with the Governor General, Mr. Wright, took place in 1905?

A. Yes, in 1905.

Mr. Feria: That is all.

165 The defendant rests its case.

Mr. Gutierrez: I desire to introduce as proof before the Court a notarial act of description of the estate of Calamba where the first description, which is the one which has given rise to this absurd interpretation which they pretend to give to the contract, was taken. I have not been able to procure a certified copy thereof before now. I asked it under a subpœna duces tecum to the Bureau of Public Lands to which all the title deeds of these estates were turned over and they have told me there that they did not know where it was and could not furnish it to me.

For this reason I ask the Court to give me time to present this deed as soon as the Bureau of Archives issues me a certified copy thereof.

Judge: You can file it.

Both parties agree to substitute the letter copy books of the defendant Company, with certified copies of the letters which have been introduced in evidence during the trial of this cause.

Judge: After the parties have presented the certified copies of the letters which counsel for the plaintiff desires to use as evidence in rebuttal and the same cousel has filed his written argument, within the term of thirteen days asked for by the same, the decision will be rendered.

I hereby certify that the foregoing testimony is the exact
166 and faithful translation of the stenographic notes taken by the undersigned at the time of the trial.

(S'g'd) JULIO JIMÉNEZ JEREZ,
Official Stenographer.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 7992.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff and Appellee,
versus
THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, et al., Defendants and Appellants.

The attorneys for parties appellant and appellee hereby agree that of the additional notarial act of November 8, 1898, complementary to the deed executed on August 8, 1898 and offered in evidence by the attorney for the defendant- and appellant-, only the introductory part and description of the estate of Calamba, and the closing clause, be included in the transcript of the record, all the rest of said notarial act being irrelevant and immaterial to the issues in this case, inasmuch as they refer to other estates wholly independent from the estate of Calamba.

In Witness Whereof, parties appellant and appellee sign this agreement on this 18 day of October, 1915.

(S'g'd) ANTONIO M. OPISSO.
(S'g'd) RAMON AVANCEÑA,
Attorney-General.

167 The Government of the Philippine Islands,
Executive Bureau,
Division of Archives,
Manila.

There is a stamp which reads: Fabrica Nl de la Moneda y Timbre—1898 y 99—Sello 10° 25C de Peso N. 1,224,269—F°.—Four

thousand two hundred twenty one—4221—Number Six Hundred Twenty Nine. Additional notarial act complementary to the deed executed on August eighth, eighteen hundred and ninety eight, extended at the request of the Most Reverend Father Fray Cándido García Valles, General Vicar of the Provincial del Santísimo Rosario de Dominicos de Filipinas—In Manila on the eighteenth day of November, eighteen hundred and ninety eight. Before me, Don Enrique Barrera y Caldés, Doctor in Civil and Canonical law, practising attorney and notary public of the Illustrious Notarial College of Manila and residing in this city, appears:—The Most Reverend Father Fray Cándido García Valles, priest and member of the Orden de Padres Predicadores, of lawful age and resident of this city, with current personal cedula of the fourteenth class number two hundred six thousand eighty five, issued by the Administración de Hacienda Pública of this Province, appearing as General Vicar of the Provincia del Santísimo Rosario de Dominicos de Filipinas, as credited by the official ecclesiastic document issued in his favor by the Most Reverend Father Fray Bartolomé Alvarez del Manzano, Provincial of the Orden de Predicadores of the said Provincia del Santísimo Rosario de Filipinas, which he exhibits to me and which

literally copied reads as follows: "There is a stamp which
168 reads: Provincia del Santísimo Rosario de Filipinas de la Orden de Predicadores.—In Dei Filio sibi dilecto R. P. Fr. Cándido García Valles Ordinis Predicatorum, Fr. Bartholomaeus Alvarez del Manzano ejusdem Ordinis ac Provinciae Santcissimi Rosarii Prior Provincialis salutem ac discretionis et prudentiae spiritum in Domino.—Cum ad celebrandum nostrum jam jamque instans Generale Capitulum proficisci debeamus, et esse extra Provinciam, ne propterea detrimentum patiatur, si absque Capite et Directore permaneat, vices nostras in et super eam tibi committere decrevimus; ideoque auctoritate oficiinostri, et presentium tenore et venerandum Patrem Fr. Candidum Garcia Valles praefatum damus, instituimus, et prafiçimus Vicarium Nostrum Generalem in et super tota nostra Provincia, atque ita datum, institutum et praefectum declaramus. In Nomine Patrís et Filii et Spiritus Sancti. Amen Damusque tibi in et super ea, et omnibus ac singulis Caenobiis, Monasteriis, Conventibus, Collegiis, locis ac Domibus, necnon omnibus et singulis Fratribus ac utriusque sexus personis, tam capitibus quam membris, et iam Tertii Ordinis, ad eam quomodolibet pertinentibus, omnen in spiritualibus et temporalibus auctoritatem, quam nos habemus, et specialiter confirmandi (si opus esset) Priores, Prioresque et Lectores absolvendi, et generaliter omnia faciendi quae nos facere possumus, etiamsi mandatum exigerent speciale. Quae auctoritas et officium incipiat, duret ac locum habeat quamdin fuerimus extra Provinciam. Mandantes tam tibi quam omnibus et singulis supra nominatis in virtute sanctae obedientiae tibi quidem

ut dictum Vicariatus officium suscipias, et diligenter ex-
169 equaris; illis vero, ut te tamquam Vicarium nostrum suscipiant, habeant, ac venerentur. Non obstantibus quibuscumque, etc. In quorum fidem, etc. Datis in hoc nostro Conventu Sti. P. N. Dominici de Manila die vigesima octava mensis Januarii anni

Domini millessimi octingentessimi nonagessimi octavi.—Fr. Bartholomæus Alvarez del Manzano.—Prior Provincialis.—There is a rubric:—Fray Josephus M. Ruiz, Srius—et Soc.—There is a ribric.—There is a seal of the Provincia del Santísimo Rosario de Filipinas.—Reg. Page two hundred fifty two."—The above agrees literally with the original document exhibited to me and to which I refer.—And I, being aware that the Most Reverend Father Fray Bartolome Alvarez del Manzano Provincial of the Dominicans in the Philippine Islands continues to be absent from this Archipelago, for which reason said Father Fray Cádido García Valles continues to be his Vicar General and, as such, has the necessary legal capacity to execute whatever pertains to said Provincial according to the Civil and Canonical laws and to the special laws of the said Province, on account of which he has in my judgment the capacity to execute this instrument, he says that, desiring by private agreement with Mr. Richard Andrews, a British subject, to lay down in an additional complementary public instrument certain legal data, perfectly susceptible of correction by notarial act, which, by reason of not having the vouchers at hand, were omitted from the deed of sale of several rural lands belonging to his Corporation executed in favor of the said Mr. Andrews on the eighth day of August last, before the undersigned notary, he exhibits to me, for that purpose, the title
170 deeds and the literal certificates of the Registry, brought from Hongkong by the will of both parties, and freely and expontaneously states:—First, That the description of the eight rural lands sold to Mr. Andrews is as follows:—A. The Estate of Calambo, denominated of San Juan Bautista of do., has actually uncultivated approximately one half of its lands, wherein there is an abundance of fire woods, timber, lime stone deposits, quarries and pasture, and of the other half, or the two fifths parts thereof, the low lands are dedicated to the cultivation of palay by irrigation, yielding at least two crops; a larger part of the high land is devoted to the cultivation of sugar-cane, and some to the cultivation of upland rice, and another small part or lots in the town and barrios of Calambo. It is bounded on the North by the boundary line of the town of Cabuyao, on the South by the limits of that of Los Baños, on the East with the Laguna de Bay, including the islet called Pulong Calamba, and on the West by the limits of the town of Tanauan and Santo Tomás, of the Province of Batangas. There are old stone monuments throughout, and its extension as recently measured is sixteen thousand four hundred and fourteen hectares equivalent to more than two thousand eight hundred and forty six quiñones realengos and to more than five thousand eight hundred and seventy-two ordinary quiñones. It was acquired by deed of sale and compromise in the year eighteen hundred and thirty one. Within its limits and situated in the plaza of the town, is the casa hacienda of stone and tile, with two camarines of stone, independent from
171 the main building, stone stables, two yards and a vegetable garden and grass plots, all of it surrounded partly by a stone and mortar wall and partly by a fence of wood posts with stone foundations; and is bounded on the front by the plaza of the town,

on the back by calle Nueva, that is to say, the street that passes at the back of the church and convent, on the right by a large lot which forms a corner with the said calle Nueva and two other lots which, following the line of the first one, end in Playa street, and on the left by the churchyard, its right wall and the wall of the convent yard. In addition to all the lots in the town and its barrios, including the lot of the new market, it possesses the houses and camarines which were inhabited and occupied by the Spaniards Don Jose Ibarra, Don Silvestre Barranquero, Don Jose Alvarez Navia and the other buildings of all those who were ousted in the years ninety, ninety-one and ninety-two, which were adjudicated to the Order in payment of judicial costs. In the barrio of Majada it possesses the casa of that name, a new building of strong material with a large stone wall, and around it there are several coffee plantations; and at different places the sugar mills, with all their camarines and accessories, called "Mapagon," which is hydraulic; "Mayapa" a steam mill; "Calamias" which is hydraulic; "Siranglupan" which is a steam one "Real," a steam one; and "Punta," which is also a steam mill; although it is believed that these mills have been destroyed at least partially by the insurgents. It has two large dams for the irrigation of the rice paddies, called San Juan and Campana, a con-
172 duit and several small walls and irrigation ditches which extend to the town, especially that of the iron pipe which runs underneath the San Cristobal River in the barrio of Calamias to irrigate the lands of Banlic and San Cristobal. Its boundaries, as they appear in the title deeds and the literal certificate of the Registry are: on Cayubao, the creek of Manatid, running along said creek up to its junction with the river of San Cristobal; from here it goes to the pass Along-Ilang and follows, from this place, the stream of the said river until it strikes mountain Bontoc at the skirt of the mountain Sungay, where the river has its source. On the side of the town of Santo Tomás, the ravine of Viga with all its turns and twists up to the top of mountain Tumbucan. On the side of Los Baños, the point of Maglilimbas at the foot of a little mountain and over the top of this mountain the boundary follows up to the two water springs, one hot and the other cold, in the place of Vacung, and from here, in a straight line, up to the top of mountain Maquiling and on the side of Laguna de Bay, a straight line, which ends in the said Maglilimbas. On the side of Tanauan it begins at the skirt of the mountain called pechong Manic and follows through a curved side, which curve faces Tanauan, until it reaches a stone monument, and from here, over the same side to Polong-Guzman, which is a broken side with several trees, and from here to the place of Olango, where there is another stone monument, and from this place in a straight line up to the ravine of Viga. This Estate was registered in the Reg-
istry of the property of Laguna at folio two of volume twenty
173 one, property number one, in December twenty first, eighteen hundred and ninety one.....

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With which this Act was finished having been read by the exponent himself who approving the amendments "sies," "cínco," "des," "f," "ca," "cuarenta," "eg," "y la otra de unos," "och," "dos," "y medio," "cinco," "Cru," "Cincuen," "an," "g-h," "on," "sti," "cien," "do," "a la," the corrections: "Do," "gl," "o," "s," "o," "na," and the interlined: "venta de," "sesenta y siete," "mayor de," "noventa," "la," "de," y "se," he ratifies himself in all his statements and said gentleman signs with me, to which I certify.—Fray Candido Garcia Valles, (there is a rubric), signed: Doctor Enrique Barrera y Caldes, (there is a rubric)—Note. On this date, November eighteenth, eighteen hundred and ninety eight I have issued a copy of the present Act, without number, on account of its character of Notarial Act, at the instance of the gentleman who requested it, in eleven sheets of stamped paper of the eighth class for the presnt term of two years to which I certify.—Barrera, (there is a rubric).

I certify that the preceeding copy is literally taken from its original which is kept in this office. In witness whereof I sign and seal these presents in Manila, this twenty first day of November, nineteen hundred and eleven.—Interlined: llamoda: Valid.

(Signed) M. DE IRIARTE,
Second Ass't Executive Secretary.

174 (Sealed:) Second Ass't Executive Secretary, ex-Officio Notary Public.

Twenty centavo Internal Revenue Stamp.

(Title of the Case Omitted.)

Mr. Eduardo Gutierrez, Attorney for the defendant, Manila.

SIR: You are hereby notified that on Saturday the 25th inst. at 8:00 a. m., or as soon thereafter as possible, the undersigned shall ask the Court of First Instance of the City of Manila, part III, to hear the attached motion.

Manila, November 21, 1911.

(S'g'd) IGNACIO VILLAMOR,
Attorney General.

Received copy of this notice this 22nd of November, 1911.

(S'g'd) E. GUTIERREZ,
Attorney for the Defendant.

(Stamped:) Filed on the 23rd of November, 1911, at 3 p. m.
(S'g'd) E. V. Filamor.

(Title of the Case Omitted.)

Now comes the undersigned before this Court in the above entitled case and asks that the proceedings in said case be suspended in order

to enable the plaintiff to ask for the depositions of the Presi-
175 dent of the United States and of Mr. Luke E. Wright, ex-Governor General of these Islands, in order to present them as rebuttal evidence, in view of the evidence presented by defendant in the above entitled case.

Manila, November 21, 1911.

(S'g'd) IGNACIO VILLAMOR,
Attorney General.

Received copy of this motion this 22nd of November, 1911.

(S'g'd) E. GUTIERREZ,
Attorney for the Defendant.

(Stamped:) Clerk's Office. Filed on the 23rd of November, 1911, at 3 p. m. (S'g'd) E. V. Filamor, Deputy Clerk.

(Title of the Case Omitted.)

Resolution.

There is pending in this case motion of counsel for the plaintiff asking that the course of the same be suspended so as to enable him to secure the depositions of the President of the United States and of General Luke E. Wright ex-Governor General of these Islands, and use them in rebuttal of the evidence adduced by defendant.

Counsel for the last named party objects to the granting of his op-onint's motion, on the ground that prior to this date he has al-
176 ready moved for the taking of said depositions, without having used the necessary diligence to make use of the successive terms which were granted him by this Court for the purpose of obtaining said depositions.

It appears in the record that on February 11, 1909, the hearing of the case was suspended until further order, in order to enable counsel for the respective contending parties to present within fifteen days the corresponding interrogatories for the issuance of the necessary commission.

Said interrogatories were to be sent to be answered by the same witnesses above named, the actual President of the United States of America and General Wright. Under date of twenty-third of the same month and year, and at the instance of the same parties, a term of thirty days was granted for the filing of said interrogatories.

On the twenty-second of March of the same year, another extension of thirty days from the last named date, was granted for the same purpose.

On April twentieth next, a new extension of thirty days from the last named date was again asked for and obtained. Until the seventeenth day of August, nineteen hundred and ten, when this Court issued an order advising the parties, under caution of dismissing the case, to take the necessary steps, nothing was done by counsel for plaintiff towards carrying into effect the issuance of the correspond-

ing commission and the obtention of the depositions of the Honorable W. H. Taft and Luke E. Wright.

From August 31 of the same year 1910, when counsel for plaintiff asked that the case be set for trial for *for* one of the days of
177 the second half of the month of September of the same year, on the ground that the majority of the witnesses for plaintiff were residents of Calamba, nothing was done either in order to obtain the depositions referred to.

Inasmuch as said depositions cannot refer but to the very facts which have been discussed between the parties since the Court overruled the demurrer of plaintiff to paragraphs 2nd and 3rd of the amended answer on February 11th, 1909, and such a long time having transpired from February 11th, 1909, up to October 25th of this year, two years eight months and — days, without plaintiff having taken the necessary steps to secure the depositions which interest him, tending to explain facts which it now tries to rebut.

The motion filed November 21st last, is hereby overruled.

Manila, December 5th, 1911.

(S'g'd) S. DEL ROSARIO, *Judge.*

This 6th of December, 1911, the parties were notified of the above decision.

(S'g'd) E. V. FILAMOR.

(Title of the Case Omitted.)

Notice of Decision.

178 MANILA, P. I., December 6, 1911.

Mr. Eduardo Gutierrez, Hon. Attorney General.

SIR: You are hereby notified by these presents that on the 5th day of December, 1911, the decision in the above entitled case was rendered, overruling the motion filed by plaintiff under date of November 21st, last

(S'g'd) E. V. FILAMOR,
Deputy Clerk.

Received copy of the foregoing notice this 7th day of December, 1911.

(S'g'd) F. R. FERIA.

Received copy of the foregoing notice this 7th day of December, 1911.

(S'g'd) E. GUTIERREZ.

(Title of the Case Omitted.)

Now comes the undersigned before this Honorable Court in the above entitled case, and files his exception against the resolution of this Court overruling the motion filed by plaintiff on November

21st, and submits the case to the decision of the Court without a written argument.

Manila, December 7th, 1911.

(S'g'd) IGNACIO VILLAMOR,
Attorney General, Attorney for Plaintiff.

179 Received copy of this notice this 7th day of December, 1911.

(S'g'd) EDUARDO GUTIERREZ,
By ARSENIO LOCSIN,
Attorney for Defendant.

(Stamped:) Filed on the 7th of December, 1911, at 3:40 p. m. (S'g'd) J. McMicking, Clerk.

OCTOBER 8TH, 1903.

Mr. Enrique Rueda, Present.

DEAR SIR: According to our verbal agreement, we sell you for the sum of eight thousand pesos, the steam mills which we have in Calamba and which were the property of Messrs. Barranquero, Ibarra, Alvarez and Amatriain, and two smaller ones which are deposited in the Casa-hacienda with their corresponding boilers, in the condition in which they are found, as well as Mr. Ibarra's tramway. As soon as it is possible for us, we shall bring them to Manila and then you shall give us the price thereof.

Yours very sincerely,

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED.

The General Manager,
(S'g'd) FRANCISCO GUTIERREZ.

180 I cer-ify that the above is a literall copy of its original which appears in the letter copy-book of said Company.

(S'g'd) E. GUTIERREZ.
(S'g'd) F. R. FERIA.

PLAZA DEL P. MORAGA, No. 7, May 26th, 1903.

Mr. Inocencio Hernandez, Calamba.

DEAR SIR: According to your letter of the 22nd instant, we authorize you to take up the tramway of our property which is laid from the Plaza to the shore of that town, and to deposit the same in the Camarine which Mr. Fuilay had leased from us; taking care not to leave untaken any piece or wagon however badly damaged it may be.

Without anything further for the present,

We are, very sincerely yours,

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED.

The General Manager,
(S'g'd) FRANCISCO GUTIERREZ.

I certify that the above is a literal copy of its original
181 which appears in the letter copy-book of the said Company.
(S'g'd) E. GUTIERREZ.
(S'g'd) F. R. FERIA.

I, Arsenio Locsin, y de La Rama, a notary public of the City of Manila and a resident of the same city, certify that Don Francisco Gutierrez Repide with personal cedula No. 1607 issued in Manila on the 16th day of February 1911, President of the Philippine Sugar Estates Development Company, Limited, "sociedad anonima" domiciled in this city and organized under the laws of the Philippine Islands and duly registered in the Mercantile Registry of the City of Manila, exhibited to me the book of the Minutes of said Company composed of one hundred and ninety-eight folios, numbered from one to one hundred and ninety-eight, and authenticated by an act dated *Manila* 14th, 1906, of the Court of the Justice of the Peace of Manila and having each folio sealed with the seal of said Court; and requested me to issue a literal certificate of a certain particular which he points out of the Minutes of the sixty-second meeting of the Board of Directors dated July 25th, 1906, beginning from folio eight and ending at folio tenth, which particular copied verbatim is of the following tenor:

"Sixty-second Meeting of the Board of Directors."

"In the City of Manila, this 25th day of July, 1906, the following members of the Board of Directors of the Philippine Sugar Estates Development Company, Limited, to wit: Don Francisco Gu-
182 tierrez Repide, President Don Acisclo Alfajeme and Don Agustin Roca Lizanda, Directors, being present, and it being 6 o'clock in the evening and the undersigned acting as secretary, the President called the meeting to order.

The Minutes of the preceeding meeting having been read, *it was* approved and signed.

The President, addressing the Board, gave an account of all his acts as manager from last meeting, and said:

Mr. Rueda (Don Enrique), in view of the fact that he had arranged his trip to Europe, and in view of the time which has elapsed since we sold him the machinery and tramway in Calamba without having been able to deliver them on account of the unsecurity which has so far existed in that region, which is the field of action of the bandit Oruga, has asked me to leave without any effect the contract of sale which he has agreed upon with the Company. He based his petition on strong reasons such as that the machinery, after having been abandoned for such a long time, would be found in an almost worthless conditions, and that, even granting that such were not the case, by reason of his trip to Europe, he would be unable to sell it until his return, a thing which would cause him damage. That when he bought them, He thought that they sould be delivered to him within a comparatively short time and that, in this case, the

purchase thereof would have been perhaps good business, but not now for the reasons above given.

"Believing that the demands of Mr. Rueda are very reasonable, I have acceded to his wishes and I have cancelled the sale. It would not be just that he should be caused to suffer any losses by reason of the Company not having been able to bring them down to the city, where the delivery was to take place, the more so when Mr. Rueda trusting my *work* bought the machinery without even having seen it.

"The Board, after having studied carefully each one of the different matters brought to its attention, fully approved every one of the acts executed by the President in the name of the Company."

The above is a literal copy of the parciculars of Minutes heretofore mentioned and to which I refer.

In witness whereof, and at the instance of the person who exhibited the same to me, I issue this present certificate which I
183 sign and seal in Manila this 5th day of December, 1911.

(S'g'd) ARSENIO LOCSIN,
Notary Public Until December, 1912.

[NOTARIAL SEAL.]

(S'g'd) EDUARDO GUTIERREZ.
(S'g'd) F. R. FERIA.

On the 8th day of February the Court rendered the decision in this case as follows:

(Title of the Case Omitted.)

Decision.

Action was brought by the Government of the Philippine Islands against the Philippine Sugar Estates Development Company, Limited, demanding payment of the sum of Fifty Thousand (P50,000.00) pesos, together with the legal interest thereon from the date of the complaint and the costs of this case.

The amount claimed represents the value of certain sugar mills called Mapagon, Mayapa, Siranglupa, Real and Punta together with the machinery, apparatus, appliances and accessories which, according to the plaintiff, had been included in the sale made to it by the defendant of several lands known as "Friar Lands," and which, the defendant appropriated to itself, removing them to a Camarin of its own, located in the town of Calamba and taking them later to other unknown places.

184 Counsel for the defendant opposes the complaint and asks that the same be dismissed on the ground that said mills were not included in the sale made of the lands above referred to in favor of the Insular Government, and that prior to the preliminary agreement entered into with the latter, they had already been conveyed to Enrique Rueda.

As it can be seen by the facts alleged in the complaint and in the answer, the only issue which the Court believes of importance to decide, is the interpretation of the deed of sale of the Calamba Estate, executed by the representative of the defendant in favor of the Insular Government on October 19th, 1905.

The said deed of sale is related to the preliminary agreement dated December 22nd, 1903 "Exhibit A" executed by and between the contracting parties.

In the preliminary agreement referred to, in which the eight estates which were the object of the contract between the Insular Government and the Defendant are described,—this defendant, amongst other things, and making reference to the Hacienda of Calamba, seems to have reserved to itself only the Casa de Majada on the mountain side of the Calamba Estate, together with eight hundred (800) hectares of cultivated sugar lands extending from the Casa Majada towards the town of Calamba, to be selected by the Company's agent in as near a compact tract as practicable so as not to interfere with the use of the remainder of the Estate by the Philippine Government.

In another paragraph of the same preliminary agreement, it is stated literally as follows:

185 "This sale and conveyance shall include all the dwelling houses, work houses, Camarines, and other buildings, irrigation works, dams, tunnels, ditches, and all other rights and all hereditaments belonging to the Company on every part of the Estates hereby agreed to be conveyed, except the two houses expressly referred — above, and also excepting a Camarin in the Poblacion of Orion in the Province of Bataan, and a Camarin in the Poblacion of Calamba, which belonged to the Philippine Sugar Estates Development Company, Limited," and so forth.

This clause seems to indicate that the mills in question were not included in the sale, inasmuch as, on mentioning all the real property which was to be included no mention has been made at all, of the mills.

The points of the preliminary contract above referred to, would be in contradiction, if the Court, in interpreting them, should confine itself exclusively to their material meaning, inasmuch as in the first mentioned paragraph it appears that the defendant, in executing the sale of several lands to the Government of the Philippine Islands, only wanted to retain and to exclude from the sale the Casa Majala above referred to, whereas in the paragraph of which later on reference has been made, it clearly appears that the contracting parties did not include the mills in question in the sale since, on mentioning one by one *by one* each piece of the real property which was to be included in the sale, said mills were omitted.

186 If we refer to the deed of sale executed on October 19th, 1905 by the defendant in favor of the Government of the Philippine Islands in order to know the real intention of the contracting parties, there we can only find the old description of the Calamba Estate such as it appears in the old title of the same. In

said description, after giving the location, the boundaries and extension of the Estate and after mentioning the house, the Camarin and the walls which exist within its limits, it is stated that there are to be found in different places the mills with their Camarines and accessories called "Mapagon," which is a hydraulic mill; "Mayapa," which is a steam mill; "Calamias" which is hydraulic; "Siranlupa," which is a steam mill; "Real," a steam one; and "Punta," which is also a steam mill, although it is believed that said mills (so it is stated in the deed) have been destroyed at least partially, by the revolutionists.

On giving the technical description of the lands composing the Calamba Estate, no mention has been made any more of said mills.

Following the technical description, it is stated verbally:

That in this conveyance to the Government of the Philippine Islands, there are included all rights and actions which the said corporation has or may legally have in all buildings and irrigation works, together with all water rights, town lands, and other improvements and accessories.

It seems that in these underlined words "Improvements and accessories," the counsel for the Insular Government bases his contention that in the sale of the Estates above mentioned, made by the defendant in favor of the plaintiff, the Sugar Mills which have been cited by their representative had been included.

187 If the Court would have to abide exclusively by the tenor of the preliminary agreement executed on December 22nd, 1903, and by the deed of sale executed between the contracting parties on December 19th, 1905, it would be really somewhat difficult for this Court to know the real intention of the contracting parties.

But in the interview, Exhibit 4, which the Governor General of the Philippine Islands, as representative of the Government of said Islands, had with Mr. Francisco Gutierrez, the manager of the defendant Corporation, on September 24, 1904, a date subsequent to the preliminary contract, but prior to that of the final deed of sale, of which interview whorthand notes were taken, which were written and filed in the office of the executive secretary, and a copy of which has been furnished by the acting executive secretary and filed in this record under No. 4, there appears that the Civil Governor, who was then General Wright, on asking Mr. Gutierrez if he had read the drafts of the proposed contracts which it was desired that the Company represented by him and the University of Santo Tomas should execute, he answered affirmatively.

When the Civil Governor asked Mr. Gutierrez again if he was satisfied, the latter answered thus: "There are, some, few things, which I want to discuss. The words "Sugar mills" are used. There are no sugar mills in these Estates. Therefore, these words must be stricken out. You will remember that on the 16th, when Governor Taft and the commission held a session, the words

188 "sugar mills" (ingenio) were inserted and I said that the Company had no sugar mills. Then Commissioner Smith asked again if the Company had any and I answered him no.

After the suggestion which the Governor General made to the

Solicitor General to the effect that he and Mr. Del Pan should hold a conference wit- Mr. Gutierrez to be advised of the changes and reforms which the latter proposed, in order to find out if there was a real point of disagreement between them, the conference or interview was again resumed in which, neither Governor General Wright nor Mr. Del Pan made any objection to the change proposed by Mr. Gutierrez both gentlemen stating that the matters involved in said change were so insignificant and so unimportant that they were simply mere change of words.

During the rest of the conference they only occupied themselves to discuss two points of capital importance to them, as it can be inferred from the questions and answers between them.

When Mr. Del Pan spoke, he said that Mr. Gutierrez differed as to five points. Two of them were insignificant and, it seemed to him, very easy to settle, one of them referring precisely to the suppression of the words sugar mills (Ingenio) asked by Mr. Gutierrez; but the other two were of considerable importance and he could not discuss them. Mr. Del Pan referred, as it appears in said interview, to the lack in the measure of some of the lands as the first important point, and to the way of drawing up the acknowledgement of the receipt of the price assigned to the estates of Santa Rosa, Santa Cruz de Malabon and Biñang which belonged
189 to the University of Santo Tomas.

No word was spoken any more about the sugar mills nor were these mentioned in the deed of sale of October 19, 1905. This shows, without the slightest doubt, that the parties, on striking out said words from the document, agreed not to include them in the sale, as demanded by the representative of the vendor, because they were not legally part of the Hacienda, for the reason that they had already been sold to Enrique Rueda prior to the preliminary agreement, as alleged by the defendant.

As the conclusion to be drawn from the conference between the Civil Governor and Mr. Gutierrez as representatives of the two contending parties who intervened in the execution of the deed of sale already mentioned on December 19, 1903, is that they had no intention to include in the same the mills which are the subject matter of this case and are claimed by the plaintiff, said plaintiff, has no right to them and the complaint filed in this case cannot be sustained.

The Philippine Sugar Estate Development Company, Limited, is acquitted from the complaint, without any express ruling on the costs.

So ordered,

Manila, February 5, 1912.

(S'g'd) S. DEL ROSARIO, *Judge.*

This 15th day of February, 1912, the parties were notified of the above decision.

190 (Title of the Case Omitted.)

Notice of Decision.

MANILA, P. I., February 13th, 1912.

Honorable Attorney General, Mr. Eduardo Gutierrez.

SIR: You are hereby notified by these presents that on the 8th day of February, 1912, the decision of the above entitled case was rendered acquitting the Philippine Sugar Estates Development Company, Limited, from the complaint, without express judgment for costs.

(S'g'd) E. V. VILAMOR.

Received copy of the foregoing notice this 13th day of Feburary, 1912.

E. GUTIERREZ.
(S'g'd) By ARSENIO LOCSIN.

Received copy of the foregoing notice this 13th day of February, 1912.

(S'g'd) F. R. FERIA.

(Title of the Case Omitted.)

Now comes the Attorney General, Counsel for plaintiff in the above entitled case and files his exception against the decision rendered by the Court in the same, announcing his intention to file a bill of exceptions.

191 At the same time he asks that a new trial be granted on the ground that the evidence does not justify the decision of the Court and that the same is contrary to law.

Manila, February 14, 1912.

(S'g'd) IGNACIO VILLAMOR,
Attorney General.

Received copy of this motion this 14th day of February, 1912.

E. GUTIERREZ,
(S'g'd) By JOSE VILLANUEVA,
Attorney for the Defendant.

(Stamped:) Filed on the 14th day of February, 1912, at 11:20 a. m. (S'g'd) J. McMicking, Clerk.

(Title of the Case Omitted.)

Mr. Eduardo Gutierrez Repide, Attorney for the Defendant, Manila, P. I.

SIR: You are hereby notified that on Saturday the 13th inst. at 8:30 a. m. or as soon thereafter as possible, the undersigned shall ask

the court of First Instance of the City of Manila, Part III, to hear and decide the motion for a new trial filed by this counsel in the above entitled case.

Manila, April 8th, 1912.

(S'g'd) IGNACIO VILLAMOR,
Attorney General, Counsel for Plaintiff.

192 (Title of the Case Omitted.)

Resolution.

Counsel for defendant objects to the granting of the motion for a new trial filed by plaintiff based in the fact that the decision rendered in this case is not in accordance with the law nor with the evidence adduced, on the ground that the decision having been rendered in this case on the 8th of February last, counsel for plaintiff has not moved for a new trial of the same, nor is it time to admit the Bill of Exceptions which may be filed because more than two months have elapsed.

The Court overruling the objection of defendant to the claims of the plaintiff, and inasmuch as, on the other hand, the decision rendered in this case is in accordance with the law and with the evidence adduced;

The new trial asked for by counsel for plaintiff, and the objection of the defendant are hereby overruled.

The exception which the counsel for plaintiff has filed against the resolution of this court denying his motion is hereby noted.

Manila, April 16, 1912.

(S'g'd) S. DEL ROSARIO, *Judge.*

This 20th of April, 1912, notices were sent to the parties of the above resolution.

(S'g'd) E. V. FILAMOR.

193 (Title of the Case Omitted.)

Now comes the attorney General, counsel for plaintiff in the above entitled case, and files his exception against the order denying the motion for the new trial, and announces his intention to file a Bill of Exceptions within the time prescribed by law.

Manila, April 24, 1912.

(Sgd.) IGNACIO VILLAMOR,
Attorney General.

Received copy of this exception this 24th of April, 1912.
EDUARDO GUTIERREZ,
(Sgd.) By ARSENIO LOCSIN,
Attorney for Plaintiff.

(Stamped:) Filed on the 25th of April, 1912, at 9:30 a. m. ——, Clerk.

(Title of the Case Omitted.)

Mr. Eduardo Gutierrez Repide, Attorney for defendant, Manila, P. I.

SIR: Please take notice that on Saturday, May 11, 1912, at 8:30 a. m., or as soon thereafter as possible, the undersigned shall ask the Court of First Instance of the City of Manila, Part III, the approval of the attached Bill of Exceptions.

Manila, April 30th, 1912.

(Sgd.) IGNACIO VILLAMOR,
Attorney General, Attorney for Plaintiff.

Received copy and Bill of Exceptions this 2nd day of May, 1912.

EDUARDO GUTIERREZ,
(Sgd.) By ARSENIO LOCSIN,
Attorney for Defendant.

194 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff,
against
THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, and the Orden de Dominicos or Padres Predicadores, Otherwise Known as Provincia del Santisimo Rosario de Filipinas, Defendants.

Bill of Exceptions.

Be it known by these presents that in the Court of First Instance of the City of Manila, the following proceedings were had:

On October 13, 1906, the Messrs. Del Pan, Ortigas and Fisher, Attorneys at law, as counselors for the Government of the Philippine Islands filed in this Court a complaint against the Philippine Sugar Estates Development Company, Limited, and the order of Dominicans or Padres Predicadores of these Islands, otherwise known as Provincia del Santisimo Rosario de Filipinas, for damages for breach of contract, which literally copied is as follows:

195 (Heading and Title Omitted.)

Complaint.

Now come the undersigned attorneys, and acting on behalf of the Government of the Philippine Islands, file a complaint against "The Philippine Sugar Estates Development Company, Limited," and its co-defendant, the Orden de Dominicos or Padres Predicadores, otherwise known as the Provincia del Santisimo Rosario de Filipinas, basing said complaint on the following cause of action.

1st. As a result of long and prolix negotiations and conferences

held between D. Francisco Gutierrez, as representative of the defendant Company—which is a sociedad anonima organized in accordance with and under the laws in force in the Philippine Islands, where it does business, having its residence therein—and the Civil Governor and Chief Executive of the Government of the said Philippine Islands, the Honorable William H. Taft, who represented that Government, the said defendant Company, about the end of the year 1903, agreed to sell, transfer and convey to the said Government of the Philippine Islands, for a stipulated price and under certain conditions for the ascertainment of the exact area of the estates, eight extensive pieces of rural property, of which the said Company was the owner with full and legal title thereto, situated in the provinces of Laguna, Cavite, Bulacan, and Bataan, amongst which, and included in the property situated in the first named Province, was to be found the so called "Hacienda de Calamba" (Calamba Estate) the description of which shall be given further on.

196 2nd. The contents of that contract or agreement preliminary to the execution of the contract of sale, appeared in a document, subscribed and signed on the twenty second day of December, 1903, in the city of Manila, Philippine Islands, by the representatives of the Government of said Philippine Islands and those of "The Philippine Sugar Estates Development Company, Limited," attested by the Apostolic delegate, Monsignor Juan Bautista Guidi, Archbishop of Stauropoli and by the Honorable A. W. Fergusson, said document being executed in triplicate and two editions made of the same, one in English and the other in Spanish, a copy of each of the editions of said preliminary contract being attached to this complaint and made part hereof, the English copy being marked "Exhibit A" and the Spanish Copy "Exhibit B."

3rd. According to the text of this preliminary contract, the defendant Company undertook to sell and transfer to the Government the said Estates, among which was the Calamba Estate, including in said sale the buildings, camarines, farm houses, warehouses, irrigation works, dams, tunnels, ditches, "and all improvements, together with all water and other rights and all hereditaments belonging to the Company on every part of the estates agreed to be conveyed," excepting expressly and definitely certain parcels from the estates and some buildings concretely specified and enumerated, which as regards the "Hacienda de Calamba" consisted in a house called "Casa de Majada," 800 hectares of tillable lands, one camarin and some building lots.

4th. On October 19th, 1905, the agent and representative, at that time, of "The Philippine Sugar Estates Development Company,
197 Limited," carrying into effect and complying with the stipulations contained in the preliminary contract of December 22nd, 1903, and after some negotiations made to determine the area of the estates to which it referred, proceeded to execute in favor of the Government of the Philippine Islands the deed of sale of the Calamba Estate for the sum of One million three hundred eighty five thousand four hundred forty three pesos and twenty-nine centavos (P1,385,443.29) before the notary public of this city Don Florencio Gonzalez

Diez, the signatures being witnessed by Don Eusebio Orense and Don Jose Varela Calderon, attorneys-at-law, said amount being paid by the representative of said Government to that of the vendor company. A copy of said deed is attached to this complaint and made part hereof, Marked "Exhibit C."

5th. In the description which is made of the Calamba Estate in the deed of sale, above referred to, after fixing the boundaries of the estate, the area thereof, the quality and condition of the land, the condition of the surface, the irrigation works existing thereon, the buildings which belong to said estate, etc., etc., it is expressly stated that, in several places thereof, there exist the hydraulic sugar mills called Mapagon and Calamias and the steam mills known as Mayapa, Siranglupa, Real and Punta; fear being expressed, however, that they may have been destroyed by revolutionists; and in the body of said deed of sale, the vendor states that "there are included in this sale and are hereby ceded and conveyed to the Government of these Islands, all the rights of action which the vendor Company
198 has or may legally exercise in the buildings, irrigation works, water rights, lots and all other improvements and accessories which exist in the Hacienda," excluding, on the other hand, the parcels of land, building lots and lands which it was agreed to exclude from the sale in the preliminary contract of December 22nd, 1903, above referred to, which was made an integrant part of the new deed.

6th. One of the parties of the deed of sale of October 19th, 1905, was the Order of Dominican Fathers or Padres Predicadores of these Islands, otherwise known as the Provincia del Santisimo Rosario de Filipinas, represented in the execution of said contract by the most Reverend Father Fr. Lucio Asencio y Pascual, Provincial Vicar of said Order, who, in the name thereof, solemnly bound the same to guarantee each and every one of the obligations contracted by virtue of said deed by the Philippine Sugar Estates Development Company, Limited, answering wholly and partially, jointly and severally with said Company for the prompt and full compliance with said obligation and for the damages which, by the breach thereof, might be suffered by the Government of the Philippine Islands.

7th. After the sale was completed, and on taking charge of the Calamba Estate, the Government of the Philippine Islands learned with natural surprise, that on several occasions from the date of the preliminary agreement, December 22nd, 1903, up to that on which the deed of sale of October 19th, 1905, was executed, and for some time after the execution thereof, but always prior to the taking of possession by the Government of said Calamba Estate,
199 The Philippine Sugar Estates Development Company, Limited, through its attorney-in-fact, agents and employees who acted under its orders, proceeded to raise, take apart and remove from the places wherein they were erected, the six sugar mills mentioned in the deed of sale and called Mapagon, Sayapa, Siranglupa, Real and Punta, with the machinery, appliances, implements and accessories of said mills, all of which were in good repair, remov-

ing them to a camarin belonging to the vendor Company situated in the town of Calamba, and taking them later to other places unknown to this plaintiff, all of which was done with the fully realized purpose of appropriating to itself all the property referred to, without authority or even knowledge of the Government of the Philippine Islands.

8th. There was also on the land of the Calamba Estate a railroad composed of rails, ties and other materials and accessories pertaining thereto, which, about the same time when the mills referred to in the above paragraph were removed, was also, without the permission or knowledge of the Government of the Philippine Islands, raised, taken apart and removed by the same persons who represented the vendor Company and acted under its orders, with the same purpose and destination as that stated in the preceding paragraph.

9th. Both the mills, as well as the railroad, to which reference has just been made, were not only attached in a fixed and permanent manner to the lands and Camarins of the Hacienda de Calamba, sold to the Government by the defendant Company,
200 but, they had been placed there with the purpose of using them for the cultivation and development of said lands, for which reason they were erected in the said Camarines, having been devoted to said purpose up to the date when the removal took place.

10. The value of said mills, with their accessories and appurtenances as well as the railroad referred to, as they were erected and laid and before they were removed by the Philippine Sugar Estates Development Company, Limited, was Fifty thousand pesos (P50,000.00).

11th. The Government of the Philippine Islands through its representative, has demanded from the vendor Company the reimbursement for the mills, railroad, and other fixed material to which this complaint refers, said Company having answered in the negative, on account of having sold beforehand the property claimed.

12th. By virtue of what is stated heretofore, we ask the Court to decide this case, sentencing the defendant Company and its codefendant the Dominican Order or Padres Predicadores of these Islands, otherwise known as provincia del Santisimo Rosario de Filipinas jointly and severally to pay to the Government of the Philippine Islands the sum of Fifty thousand pesos with the legal interest which the same may earn from the date of the filing of this complaint and the costs of the present litigation, granting also to the plaintiff whatever other remedy may be just.

Defendant having been summoned, it filed its appearance
201 in the record through its attorneys Messrs. Hartigan, Rhode and Gutierrez, who *in* November 8th, 1906, filed in Court a demurrer against the foregoing complaint, which demurrer, literally copied, reads as follows:

(Title of the Case Omitted.)

Now come the defendants through the undersigned attorneys and file a demurrer against the complaint filed in this record, on the following grounds:

I.

That the complaint does not state facts sufficient to constitute a cause of action.

II.

That the complaint is ambiguous, unintelligible and vague.

Wherefore, we ask the Court to sustain the above demurrer.

The Court deciding the foregoing demurrer, on December 7, 1906, rendered the following resolution:

(Title of the Case Omitted.)

The demurrer filed to the complaint by the attorneys for the defendant has been called for hearing.

After having heard the arguments, of the attorneys for the respective parties, and taking into consideration that said complaint is not ambiguous, unintelligible or vague; and it appearing that by all the statements made therein taken together with the
202 contents of the documents, copies of which have been attached to the complaint marked "B" and "C" and dated respectively December 22, 1903, and October 19, 1905, the facts alleged in the said complaint are sufficient to constitute a cause of action.

The demurrer is overruled and defendants are given five days to answer.

On December 10, 1906, counsel for the defendant filed in Court the following answer to the complaint:

(Title of the Case Omitted.)

Now come the defendants through the undersigned attorneys and answering to the complaint allege:

I.

That they admit paragraphs 1st, 2nd, 3rd, 4th, and 6th of the complaint and deny generally and especially all the other facts alleged in the same.

Wherefore, They ask the Court to render judgment acquitting the defendants from the complaint filed against them with costs against the plaintiff.

On June 27, 1907, the Attorney General filed the following notice, to wit:

(Title of the Case Omitted.)

The Attorney General, on behalf of the Insular Government, comes before this Court and states:

203 That Messrs. Del Pan, Ortigas and Fisher, having ceased to be the attorneys for the Government in the above entitled case and the Attorney General taking charge henceforward, the undersigned files his appearance in the said case and asks this Court that all process and notices to be issued in the future be addressed to him.

Manila, June 27, 1907.

(S'g'd) GREGORIO ARANETA,
Attorney General,
Attorney for the Government.

We consent:

(S'g'd) DEL PAN, ORTIGAS AND FISHER.

On January 29, 1909, counsel for defendant filed in Court an amended answer which reads as follows:

(Title of the Case Omitted.)

Now come the defendants through the undersigned attorney and amending the answer filed in this record, allege:

That they admit paragraphs I, II, III, IV and V of the complaint, and deny generally and specifically all the other facts contained in the same.

As a special defense, the defendants allege:

I.

That prior to signing the preliminary agreement of sale made by the "Philippine Sugar Estates Development Company, Limited," of its property, in favor of the Insular Government, the said
204 Company, had conveyed and sold to Don Enrique Rueda a railroad built on the Calamba Estate as well as the Sugar Mills existing therein, called Mapagon, Calamias, Mayayapa, Sirang-lupa, Real and Punta which were torn down and almost destroyed by the revolutionists, the supposed value whereof, is claimed in the present case

II.

That this sale made by the Philippine Sugar Estates Development Company, Limited, in the month of October 1903, in favor of Sr. Rueda was make known to the Insular Government before the preliminary agreement of December 22, 1903 was signed, for which reason the words "Railroad and sugar mills" were not inserted in said agreement as being included in the sale.

III.

That when the final deed of sale of the Calamba Estate to the Government was being drafted, the attorneys for the Government pretended to insert in it the words "sugar mills," to which the representative of the Philippine Sugar Estates Development Company, Limited, objected, stating that the Government had knowledge that they could not be included in the sale because they did not belong to the defendant Company any longer.

IV.

That for this reason the Government confined itself to demand that in the body of the final deed of sale it should be specified that "there is included in this sale and are hereby ceded and conveyed to the Government of the islands, all the rights and actions which the Company which I represent has or may legally exercise in the buildings, irrigation works, water rights, lots and all other
205 improvements and accessories which exist in the Hacienda or lands sold and conveyed by this instrument and likewise I subrogate the Government in all the rights and actions which the Company which I represent, has and may still legally exercise on the rents due and unpaid by the occupants of the same Estate" without inserting the words ingenios or "sugar mills"; over which the Company had no right.

V.

Therefore, the said sugar mills and railroad which are the subject matter of this litigation, not having been included in the sale of the Calamba Estate to the Insular Government,

We ask this Honorable Court to render judgment acquitting the defendants and sentencing the plaintiff to pay the costs.

Manila, January 29, 1909.

(S'g'd) EDUARDO GUTIERREZ,
Attorney for the Defendants.

On February 1st, 1909, the Attorney General filed a demurrer to the special defense alleged in the amended answer of the defendant which demurrer literally copied is as follows:

(Title of the Case Omitted.)

Now comes the above named plaintiff by Ignacio Villamor, Attorney General of the Philippine Islands, its attorney, and
206 demurrs to the special defense set forth in the defendant's amended answer in said action for the reason that the said special defense does not state facts sufficient to constitute a defense.

The said special defense alleges that prior to the execution of the contract of sale between the parties hereto, the execution of which is admitted by the answer of the defendants, there was an oral agree-

ment or understanding, whereby the sugar mills in question were reserved from such contract, and the oral contract between the parties provided that the said sugar mills should be reserved from the provisions of such sale, and that by mistake the same was included in the written deed of sale.

This, in effect, is an attempt to vary the terms of a written instrument by oral evidence of a previous verbal understanding and is inadmissible under the law.

On February 6th, 1909, the Court dictated the following resolution sustaining said demurrer.

(Title of the Case Omitted.)

The defendant having filed in this case on the 30th of last month, an amended answer setting forth in the same a special defense, a demurrer has been filed to said special defense by the attorney for the plaintiff.

Inasmuch as the special defense set forth in said amended answer tends to impugn or alter the contents of the deed of sale executed by the parties, on which the complaint filed in this action is based by parol evidence of an oral agreement between said parties
207 prior to or coetaneous to the execution of the said deed of sale, it is clear that the facts alleged in said special defense are not sufficient to constitute a defense.

The demurrer filed against said special defense alleged in the amended answer of the defendants is therefore sustained.

Counsel for the defendant- on February 11th, 1909 filed another amended answer which reads as follows:

(Title of the Case Omitted.)

Now come the defendants through the undersigned attorney and amending the answer filed in this case allege:

That they deny generally and specifically each and every one of the facts alleged in the complaint.

As a special defense, the defendants allege:

I.

That prior to the signing of the preliminary agreement as well as to the signing of the final deed of sale made by the Philippine Sugar Estates Development Company, Limited, of all its property to the Insular Government among which was included the Calamba Estate, the contracting parties agreed not to include in the sale the railroad and the Sugar mills which are claimed in the present case, for the reason that they had already been sold by the defendant Company to Don Enrique Rueda, and in the appraisal of the property
208 sold, the value of the property which is now specifically claimed in the complaint, was not included or paid.

II.

That on drafting the final deed of sale to the Government, which is attached by the plaintiff to the complaint, marked "Exhibit B" and made part of said complaint, it was understood by the contracting parties that the contract did not include the above mentioned railroad, sugar mills and accessories which are now claimed, and though in said instrument use is made of the words "and all other improvements and accessories which exist in the hacienda" as included in the sale, it was understood by the contracting parties, that under such general terms, the said railroad, sugar mills and other accessories were not to be considered included in the sale, nor was it the intention of the parties to include them.

III.

That for this reason the defendants impugn the instrument attached to the complaint in that the same may give, and in fact does give rise to an interpretation which is contrary to and does not express the real intention and agreement of the contracting parties.

Wherefore, the said sugar mills and railroad, not being included in the sale of the Calamba Estate to the Insular Government,

We ask this Honorable Court to render judgment acquitting the defendants and sentencing the plaintiff to pay the costs.

209 Manila, February 11, 1909.

(S'g'd) EDUARDO GUTIERREZ,
By ALEJANDRO SAENZ,
Attorney for the Defendants.

CITY OF MANILA, *ss:*

I, Francisco Gutierrez Repide after having been legally sworn, state: That I have read the above writing; that I know of my own and personal knowledge the facts and allegations contained therein, and I do affirm that the same are true and such as in said writing represented.

(S'g'd) FRANCISCO GUTIERREZ.

Suscribed and sworn before me this 11th day of February, 1909, exhibiting his certificate of cedula No. 133524, issued in Manila on April 3rd, 1908.

(S'g'd) ALEJANDRO SAENZ,
Notary Public.

My commission expires December 31, 1910.

On the same date, Febryary 11th, 1909, the Attorney General, on behalf of the plaintiff, filed a demurrer to the special defense alleged in the second amended answer, which demurrer literally copied is as follows:

(Title of the Case Omitted.)

Now comes the above named plaintiff, by Ignacio Villamor, Attorney General of the Philippine Islands its attorney, and
210 demurs to the special defense set forth in the defendants' second amended answer in this action, for the reason that said special defense does not state facts sufficient to constitute a defense.

The said special defense alleges that prior to the execution of the contract of sale between the parties to this action, the execution of which is admitted by the answer of the defendants, there was an oral agreement whereby the sugar mills in question were excluded from the said contract and that the oral agreement provided that the said sugar mill- should be reserved from the provisions of said sale, and that by mistake the said mills were included in the deed of sale.

This in effect, is an attempt to vary the terms of a written instrument by oral evidence of a previous oral agreement and is inadmissible under law.

The Court deciding the foregoing demurrer, on February 11th, 1909, dictated the following order:

(Title of the Case Omitted.)

The amended answer filed today by the defendants having been demurred to by the plaintiff on the same grounds as those alleged in the previous demurrer to the previous amended answer filed by the said defendants; having examined the last amended answer and taking into consideration the grounds of the demurrer filed against the same by the attorney for the plaintiff, the Court is of the opinion that although, in regard to the first paragraph of this last amended answer, the same reasons exist now as those which this Court considered well taken to sustain the demurrer filed by the at-
211 torney for the plaintiff, there is no reason to sustain said demurrer in regard to paragraphs second and third of the last amended answer, because in the way ther are worded, the defendants make use of the right granted by paragraph first of section 285 of the Code of Civil Procedure, putting in issue or trying to put in issue as erroneous or imperfect and not expressing the true intent and agreement of the parties, the deed of sale of the Calamba Estate; in which estate, according to the description made in the preliminary agreement "Exhibit A," there exist or should exist the mills and accessories which are now claimed by plaintiff in the complaint.

In the first paragraph of the last amended answer reference is made to an agreement preliminary to the sale or to the execution of the deed of sale, and it is said that for this reason the value of the property which is specifically claimed in the complaint was not included or paid. It is true that the contents of a written document such as the deed of sale of the Calamba Estate, "Exhibit C," cannot

be impugned or altered by parol evidence, but this does not mean that said instrument may not be impugned as erroneous or imperfect or as not expressing the true intent and agreement of the parties when the allegations in a written answer tend to show which is the true interpretation which must be given to the words of the contract, in regard to the intention of the contracting parties, and this is what the defendants have done in paragraphs second and third of their last answer, which allegation is in accordance
212 with the denial made by the same defendants in their first answer of all the facts alleged in the complaint from, and including, paragraph 7th thereof.

In a suit, the defendant can, in his answer, deny specifically under oath the contents of a document filed with the complaint, dispute the same, and try to show at the trial that said document does not contain the true intent of the contracting parties, or that such document is irroneous or imperfect, so that the Court may decide which is the true interpretation to be given to the contract in regard to the real intention of the contracting parties.

The demurrer to the amended answer is therefore sustained as to the first paragraph of said answer and the said demurrer is overruled as to the second and third paragraphs of the above mentioned answer.

On October 25th, 1911, both parties filed their exception against the foregoing resolution through the notice appearing on pages 94 and 95 of the record.

(Title of the Case Omitted.)

Now comes the Attorney General representing the Government in the above entitled case and excepts to the resolution of the Court dated February 11, 1909, sustaining plaintiff's demurrer as to the first paragraph of the special defense filed by the defendant in its answer.

213 The case having been called for hearing and trial of the case having been had on October 25, 1911, and both parties having presented oral and documentary evidence which is made part of this Bill of Exceptions, the court on February 8, 1912, rendered the following decision:

(Title of the Case Omitted.)

Action was brought by the Government of the Philippine Islands against the Philippine Sugar Estates Development Company, Limited, demanding payment of the sum of Fifty thousand (P50,000.00) pesos, together with the legal interest thereon from the date of the complaint and the costs of this case.

The amount claimed represents the value of certain sugar mills called Mapagon, Mayapa, Siranglupa, Real and Punta together with the machinery, apparatus, appliances and accessories which, according to the plaintiff, had been included in the sale made to it by the

defendant of several lands known as "Friar Lands," and which, the defendant appropriated to itself, removing them to a Camarin of its own, located in the town of Calamba and taking them later to other unknown places.

Counsel for the defendant opposes the complaint and asks that the same be dismissed on the ground that said mills were not included in the sale made of the lands above referred to in favor of the Insular Government, and that prior to the preliminary agreement entered into with the latter, they had already been conveyed to Enrique Rueda.

As it can be seen by the facts alleged in the complaint and
214 in the answer, the only issue which the court believes of importance to decide is the interpretation of the deed of sale of the Calamba Estate, executed by the representative of the defendant in favor of the Insular Government on October 19th, 1905.

The said deed of sale is related to the preliminary agreement dated December 22nd, 1903, "Exhibit A," executed by and between the contracting parties.

In the preliminary agreement referred to,—in which the eight estates which were the object of the contract between the Insular Government and the defendant are described,—this defendant, amongst other things, and making reference to the Hacienda of Calamba, seems to have reserved to itself only the case of Majala on the mountain side of the Calamba Estate, together with eight hundred (800) hectares of cultivated sugar lands extending from the casa Majala towards the town of Calamba, to be selected by the Company's agent in as near a compact tract as practicable so as not to interfere with the use of the remainder of the Estate by the Philippine Government.

In another paragraph of the same preliminary agreement, it stated literally as follows:

"This sale and conveyance shall include all the dwelling houses, work houses, Camarines, and other buildings, irrigation works, dams, tunnels, ditches, and all other improvements, together with all water and other rights and all hereditaments belonging to the Company on every part of the Estates hereby agreed to be conveyed, except the two houses expressly referred — above, and also excepting a camarin
in the poblacion of Orion in the province of Bataan, and a
215 Camarin in the poblacion of Calamba, which belonged to the Philippine Sugar Estates Development Company Limited," and so forth.

This clause seems to indicate that the mills in question were not included in the sale, inasmuch as, on mentioning all the real property which was to be included, no mention has been made at all, of the mills.

The points of the preliminary contract above referred to, would be in contradiction, if the court, in interpreting them, should confine itself exclusively to their material meaning, inasmuch as in the first mentioned paragraph it appears that the defendant, on executing the sale of several lands to the Government of the Philippine Islands,

only wanted to retain and to exclude from the sale the Casa Majala above referred to, whereas in the paragraph of which later on reference has been made, it clearly appears that the contracting parties did not include the mills in question in the sale since, on mentioning one by one each piece of the real property which was to be included in the sale, said mills were omitted.

If we refer to the deed of sale executed on October 19th, 1905, by the defendant in favor of the Government of the Philippine Islands in order to know the real intention of the contracting parties, there we can only find the old description of the Calamba Estate such as it appears in the old title of the same. In said description, after giving the location, the boundaries and extension of the Estate and after mentioning the house, the Camarin and the walls which exist within its limits, it is stated that there are to be found in different places the mills with their Camarines and accessories called
216 "Mapagon," which is a hydraulic mill; "Mayapa," which is a steam mill; "Calamias," which is hydraulic; "Siranglupa," which is a steam mill; "Real," a steam one; and "Punta," which is also a steam mill, although it is believed that said mills (so it is stated in the deed) have been destroyed, at least partially, by the revolutionists.

On giving the technical description of the lands composing the Calamba Estate, no mention has been made any more of said mills.

Following the technical description, it is stated verbally:

That in this conveyance to the Government of the Philippine Islands, there are included all rights and actions which the said corporation has or may legally have in all buildings and irrigation works, together with all water rights, town lands and other improvements and accessories.

It seems that in these underlined words "improvements and accessories," the counsel for the Insular Government bases his contention that in the sale of the Estates above mentioned, made by the defendant in favor of the plaintiff, the Sugar mills which have been cited by their representative had been included.

If the Court would have to abide exclusively by the tenor of the preliminary agreement executed on December 22nd, 1903, and by the deed of sale executed between the contracting parties on December 19th, 1905, it would be really somewhat difficult for this Court to know the real intention of the contracting parties.

217 But in the interview, Exhibit 4, which the Governor General of the Philippine Islands, as representative of the Government of said Islands, had with Mr. Francisco Gutierrez, the manager of the defendant Corporation, on September 24, 1904, a date subsequent to the preliminary contract, but prior to that of the final deed of sale, of which interview shorthand notes were taken, which were written and filed in the office of the executive secretary, and a copy of which has been furnished by the acting executive secretary and filed in this record under No. 4, there appears that the civil Governor, who was then General Wright on asking Mr. Gutierrez if he had read the drafts of the proposed contracts which it was desired that the

Company represented by him and the University of Santo Tomas should execute, he answered affirmatively.

When the Civil Governor asked Mr. Gutierrez again if he was satisfied, the latter answered thus: "There are, some, few things, which I want to discuss. The words "Sugar Mills" are used. There are no sugar mills in these Estates. Therefore, these words must be stricken out. You will remember that on the 16th, when Governor Taft and the Commission held a ses-ion, the words "Sugar Mills" (Ingenio) were inserted and I said that the Company had no sugar mills. Then Commissioner Smith asked again "if the Company had any and I answered him: no."

After the suggestion which the Governor General made to the Solicitor General to the effect that he and Del Pan should hold a conference with Mr. Gutierrez to be advised of the changes and reforms which the latter proposed, in order to find out if there
218 was a real point of disagreement between them, the conference or interview was again resumed in which, neither Governor General Wright nor Mr. Del Pan made any objection to the change proposed by Mr. Gutierrez, both gentlemen stating that the matters involved in said change were so insignificant and so unimportant that they were simply mere change of words.

During the rest of the conference they only occupied themselves to discuss two points of capital importance to them, as it can be inferred from the questions and answers between them.

When Mr. Del Pan spoke, he said that Mr. Gutierrez differed as to five points. Two of them were insignificant and, it seemed to him, very easy to settle, one of them referring precisely to the suppression of the words sugar mills (Ingenio) asked by Mr. Gutierrez; but the other two were of considerable importance and he could not discuss them. Mr. Del Pan referred, as it appears in said interview, to the lack in the measure of some of the lands as the first important point, and to the way of drawing up the acknowledgment of the receipt of the price assigned to the estates of Santa Rosa, Santa Cruz de Malabon and Biñang which belonged to the University of Santo Tomas.

No word was spoken any more about the sugar mills nor were these mentioned in the deed of sale of October 19, 1905. This shows, without the slightest doubt, that the parties, on striking out said words from the document, agreed not to include them in the sale, as demanded by the representative of the vendor, because they were not legally part of the Hacienda, for the reason that they had already been sold to Enrique Rueda prior to the preliminary agreement, as alleged by the defendant.

219 As the conclusion to be drawn from the conference between the Civil Governor and Mr. Gutierrez as representatives of the two contending parties who intervened in the execution of the deed of sale already mentioned on December 19, 1903, is that they had no intention to include in the same the mills which are the subject matter of this case and are claimed by the plaintiff, said plaintiff has no right to them, and the complaint filed in this case cannot be sustained.

The Philippine Sugar Estates Development Company, Limited,

is acquitted from the complaint, without any express ruling on the costs.

So ordered,

Manila, February 5, 1912.

(S'g'd) S. DEL ROSARIO, *Judge.*

Against this decision counsel for plaintiff on the 14th of the same month, filed his exception in due time and form, and announced his intention to file the corresponding Bill of Exceptions, asking at the same time for a new trial, alleging as grounds therefor that the evidence did not justify the findings of the Court and that the decision rendered was contrary to the law.

On April 16th, 1912, the court deciding the motion for a new trial rendered the following resolution overruling the same.

(Title of the Case Omitted.)

Counsel for defendant objects to the granting of the motion for a new trial filed by plaintiff based *in* the fact that the decision
220 rendered in this case is not in accordance with the law nor with the evidence adduced, on the ground that the decision having been rendered in this case on the 8th of February last, counsel for plaintiff has not asked for a new trial of the same, nor is it time to admit the Bill of Exceptions which may be filed because more than two months have elapsed.

The Court overruled the objection of defendant to the pretensions of the plaintiff, and the decision rendered in this case being, on the other hand, in accordance with the law and with the evidence adduced;

The new trial asked for by counsel for plaintiff and the objection of the defendant are hereby overruled.

The exception which the counsel for plaintiff has filed against the resolution of this Court denying his motion is hereby noted.

Against the foregoing resolution, counsel for plaintiff filed his exception in due time.

And by virtue of the above, counsel for plaintiff files his Bill of Exceptions within the time fixed by law, and asks the Court that the same be approved and certified.

Manila, April 30th, 1912.

(S'g'd) IGNACIO VILLAMOR,
Attorney General, Attorney for the Plaintiff.

221 *Judge's Certificate to the Bill of Exceptions.*

(Title of the Case Omitted.)

I hereby certify that the foregoing Bill of Exceptions is correct and contains all the essential parts for a clear understanding of all errors assigned. Execution of the judgment shall not be stayed unless the appellant executes a good and sufficient bond in the sum of — (P—) Pesos, with sureties of recognized solvency to the satis-

faction of the Court, to secure the performance of the judgment appealed from in case it be affirmed in whole or in part.

Manila, May 18th, 1912.

(S'g'd) A. S. CROSSFIELD, *Judge.*

PHILIPPINE ISLANDS,
Manila, ss:

The undersigned hereby certifies that the foregoing Bill of Exceptions, composed of 17 pages, is the original Bill of Exceptions presented by the appellant and approved by this Court.

In faith whereof, I sign these presents, in Manila, this 7th day of June, 1912.

(S'g'd) E. V. FILAMOR, *Clerk.*

Stamped: Supreme Court of the Philippine Islands. Received June 7th, 1912. Clerk's Office.

222 Clerk's Office,
Supreme Court of the Philippine Islands,
Manila, P. I.

June 8, 1912.

Honorable Attorney General, Manila.

SIR: I have the honor to notify you that on the 7th instant the Clerk's Office of the Supreme Court received the Bill of Exceptions together with the Original record, in case No. 7992 of the General Registry of this Court, the Government of the Philippine Islands against the Philippine Sugar Estates Development Company, Limited, et al., from the Court of First Instance of Manila, by virtue of the appeal taken by plaintiff against the decision rendered in the First Instance.

Very respectfully,

J. E. BLANCO,
Clerk Supreme Court, P. I.,
(Sgd.) By V. ALBERT, *Deputy.*

Be it known that on this 3rd day of July, 1912, three copies of this printed Bill of Exceptions were sent to each one of the attorneys in this case by registered mail.

J. E. BLANCO,
Clerk Supreme Court.
(Sgd.) By V. ALBERT, *Deputy.*

Received.
(Sgd.) F. R. FERIA.

223 The parties submitted their printed briefs in due time, plaintiff and appellant assigning the following errors alleged to have been committed by the lower Court in the trial of the above entitled case.

I.

The Court erred in overruling the demurrer filed by plaintiff to the special defense alleged in the answer of the defendant.

II.

The Court erred in admitting the evidence adduced by defendant tending to modify or vary the terms of a written contract entered into between the plaintiff and said defendant.

III.

The Court erred in not sentencing the defendant to the payment of the sum of Fifty thousand (P50,000.00) pesos, the value of the railroad and the sugar mills claimed in the complaint.

The case was set for hearing before the Supreme Court of the Philippine Islands on appeal by plaintiff on September 2nd, 1913, and after being submitted on January 1st, 1914, said Supreme Court of the Philippine Islands on March 4th, 1915, rendered the final decision of the case which is herein set forth.

224 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 7992.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff and Appellant,
versus.
THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, and Others, Defendants and Appellees.

MORELAND, *J.*:

This is an action begun by the Government of the Philippine Islands against the Philippine Sugar Estates Development Company, Limited, and the Order of the Dominicans to recover the sum of P50,000.00, the value of a railroad and various sugar mills which, according to the complaint, formed a part of the real estate, consisting of a certain Hacienda, sold by the defendants to the plaintiff and which, after such sale, were illegally removed from said Hacienda by the defendants and converted to their own use.

The defendants answered the complaint admitting the sale of the hacienda, also substantially admitting the removal of the rail-
225 road and sugar mills, but denied that the latter were included in the hacienda the sale of which is the basis of the action.

As a special defense the defendants alleged "that on the execution of the conveyance to the Insular Government, which is annexed to

plaintiff's complaint and marked Exhibit B, it was understood by the parties to the conveyance that such conveyance did not include the same railroad or sugar mill and their accessories, for which suit has been brought, and although such conveyance contains the words "and all other improvements and accessories at the present time on said hacienda" as having been included in the sale, it was understood by the parties that the said railroad and sugar mills and accessories were not included in that general description, nor was it the intention of the parties to include them, "and for this reason the defendants impugn the contract annexed to the complaint in so far as it may be construed in a sense contrary to this position, on the ground that it does not express the real intention of the parties."

The plaintiff demurred to the portion of the answer above quoted upon the ground that it was not a defense, "as the evidence which would have to be offered in support thereof was incompetent, irrelevant and immaterial in that such evidence, if offered, would be parol evidence and would vary the terms of a written instrument." The demurrer was overruled and the cause went to trial. The court found in favor of the defendants, dismissing the complaint on the merits. This appeal is from that judgment.

The question before us for decision is whether the conveyance from the defendants to the plaintiff includes, as matter of law,
226 the railroad and the sugar mills, with their accessories, the subject of this dispute, and whether in case they are included in the conveyance, parol evidence is admissible to exclude them.

On the 22nd day of December, 1903, the parties in this action entered into a contract for the sale of certain lands and premises therein described, among others, lands known as the Calamba Sugar Estate. In that contract appears the following:

"This sale and conveyance shall include all the dwelling-houses, farm-houses, warehouses, camarines and other buildings, irrigation works, dams, tunnels, ditches, and all other improvements, together with all water and other rights of hereditament belonging to the company on every part of the estates hereby agreed to be conveyed.

In the final conveyance, made in pursuance of this contract and which is the basis of this action, the following clause appears relative to the Calamba hacienda:

"And, furthermore, I declare that there is included in this sale and is hereby ceded and conveyed to the Government of these Islands, all the rights and interests which the company which I represent has or may legally exercise in the buildings, irrigation works, water rights, improved lands, and all other improvements and accessories, which exist in the hacienda or lands sold and conveyed by this instrument.

We held in the case of Fernandez vs. Shearer, 19 Phil. Rep. 75, that sugar mills constitute an improvement of the lands upon which they are built and are subject to taxation as real estate. We also held in the case of Bischoff v. Pomar, etc., 12 Phil. Rep. 690, that a mortgage given on real estate includes, and constitutes a lien upon sugar mills and other improvements affixed to and forming part of the land at the time the mortgage was given.

Under these holdings, the sale of the land would carry with it, without further words, all the improvements existing
227 thereon at the time of the sale and forming part thereof. Certainly such improvements, whether railroads or sugar mills, would be included in the phrase "all other improvements and accessories."

Section 285 of the Code of Civil Procedure is as follows:

"Written agreement presumed to contain all the terms of the agreement. When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be, between the parties and their representatives or successors in interest, no evidence of the terms of agreement other than the contents of the writing, except in the following cases:

"(*a*) Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, is put in issue by the pleadings;

"(*b*) Where the validity of the agreement is the fact in dispute; but this section does not exclude other evidence of the circumstances under which the agreement was made, or to which it relates, or to explain an intrinsic ambiguity, or to establish its illegality or fraud. The term 'agreement' includes deeds and instruments conveying real estate, and wills as well as contracts between parties."

It is contended that parol evidence is admissible in the case at bar to show that it was understood between the parties at the time the sale was made that neither the sale of the real estate itself nor the additional words "all other improvements and accessories" were intended to include the railroad and the sugar mills,—indeed, that it was expressly agreed at the time the conveyance was executed that they should be excluded. The authority for this contention is to be found, it is alleged, in that part of paragraph 1 of the section just quoted which makes an exception to the general rule that parol evidence cannot be introduced to contradict or vary the terms of a written instrument, and permits its introduction when the writing "fails to express the true intent and agreement of the parties,"
228 which failure "is put in issue by the pleadings." The defendants claim that, if the sale of the real estate, without further words, or if the words "all other improvements and accessories" are held, as matter of law, to include the railroad and sugar mills then on the land and forming part thereof, then the agreement "fails to express the true intent and agreement of the parties," and that accordingly, authority is found in the section referred to for the introduction of parol evidence showing what the true agreement of the parties was.

We regard this contention as too broad. We do not believe it to have been the intention of the legislature to authorize the introduction of parol evidence respecting the terms of a written instrument under the circumstances set forth in the contention. Such a theory would prevent written instruments, to a considerable extent, from serving the purpose they were designed to serve and would leave them of little more value than parol agreements. If, against the objection of the vendee, properly interposed, one may, in the absence of

fraud or mistake, successfully maintain, after he has executed a conveyance of real estate, that he intended, and it was verbally agreed that certain buildings on the premises, forming part of the freehold, should be excepted or reserved from the operation of the conveyance, or that only half of the premises described in the conveyance were excepted from the terms of the conveyance, and thereby materially modify the meaning and effect of the document, written instruments cease to have substantial value as such (Jones, Commentaries on Evidence (Horwitz) 485, 486, Vol. 3; Yu Tek & Co. vs. Gonzalez, 13 Off. Gaz. 372).

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Under our Code of Civil Procedure parol evidence may be introduced to relieve from an imperfection or to correct a mistake which has prevented any real agreement from being reached, or which has occasioned the expression of that which was not the true agreement; or to attack the validity of the agreement, and for the other purposes named in the second paragraph of section 285. Where there is an imperfection or mistake in an instrument, it either does not express any agreement at all between the parties or it does not express their real agreement. Where there is no mistake or imperfection, it expresses both; and the reference in paragraph 1 of said section to the failure of the instrument "to express the true intent and agreement of the parties" refers to a mistake or imperfection by which the failure is produced.

In many cases, mistake, as such, has no legal effect. It neither adds anything to nor takes anything from the legal consequence of an act, either as regards the rights of other persons or the liability of the persons performing the act. Nor does mistake of itself necessarily affect the validity of contracts. A mistake, as we have already said, may prevent any real agreement from being reached or may occasion the expression of that which was not the true agreement; but if the minds of the parties actually met on all the essentials of a contract, and the instrument which purports to evidence it is in fact a true exposition of that contract, no amount of mistake in respect to the legal effect of the contract will induce a court, either of law or equity, to interfere. Courts in exercising the powers of rescission and reformation do not operate upon contracts at all but merely upon what erroneously purports to be contracts. Courts will not reform a writing so as to give an agreement a different effect from that which the parties intentionally entered into simply because the contract as executed does not effect the purpose of its execution, nor insert in the instrument a part of an antecedent verbal agreement which was designedly left out of the written contract, either through ignorance of the necessity for its insertion, or because its performance was trusted to the honor of the defendant. The inquiry is not what contract the parties intended to enter into, but what is the contract they did enter into. Their intention may have been one thing, their agreement quite another. For the same reason a court of equity will not rescind a contract or reform an instrument merely because the parties may have been mistaken as to its legal interpretation and effect, nor will such a mis-

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take be recognized as any defense to a suit upon the contract or instrument. The section under discussion cannot be construed to mean that a party may contradict or modify the terms of a written agreement which he voluntarily signed with full knowledge of its provisions.

As we have intimated, however, there are mistakes that are referred to in Sec. 285,—a mistake or imperfection. Such a mistake is one which prevents any contract actualiy entered into from being properly expressed. Where the instrument contains what the parties intended it should and understood that it did, it is presumed to
231 express their intention. At least parol evidence will not be admitted to contradict or vary the terms of the instrument under such circumstances.

The only uses to which parol evidence may be put with respect to a written instrument, aside from the cases referred to, are those mentioned in the second paragraph of section 285. In the case before us it is not alleged that there was a mistake of the parties in the formulation of the conveyance or that the conveyance is imperfect, invalid or ambiguous. It is claimed, simply, that the vendors did not understand that the conveyance itself and the words used therein meant what in law they mean and, therefore, ask that they be permitted to contradict or vary their plain meaning and effect by showing, by parol evidence, that they did not include the particular improvements which are the subject-matter of this suit. We do not believe that parol evidence is admissible under such circumstances.

We do not discuss the general rule relative to the admissibility of parol evidence in connection with written instruments, or the varied exceptions to that rule, as laid down by the courts of the United States. It is unnecessary here. The statute, with reasonable clearness, states the rule and gives the exceptions. It is not our province to do more that apply it.

In the case of Pastor vs. Caspar, 2 Phil. Rep. 592, the court said, page 599:

"(2) The parties made a verbal agreement which they afterwards reduced to writing. Section 285 of the Code of Civil Procedure prohibits any parol evidence as to other terms not contained in the writing. Under this section, even if there had been agreements other than those contained in the instrument and inconsistent therewith, the plaintiff could not testify to them.
232 The plaintiff claims that this section does not prohibit evidence as to the surrounding circumstances. This is true, and the plaintiff was at the trial allowed to testify that he bought the lorchas himself in Iloilo; that he was paid $500.00 for so doing; that $20,000.00 was borrowed from the Banco Españos Filipino for the purpose of paying for them; and as to other details. There was no intrinsic ambiguity in the contract which required explanation. When a written contract is vague and indefinite, it can be explained by showing what the surrounding circumstances were (sec. 289), but not by showing by parol what the prior agreement in fact was."

(See also Icaza v. Ortega, 5 Phil. Rep. 166; Sanz v. Lavin Brothers, 6 Phil. Rep. 299; Testagorda v. Commanding General, 6 Phil. Rep. 573; Mugruza v. International Bank, 10 Phil. Rep. 346; De Guzman v. Balarag, 11 Phil. Rep. 503; U. S. vs. Macaspac, 12 Phil. Rep. 26; Jose vs. Damian, 14 Phil. Rep. 104; Sy Joc Lieng v. Sy Quia, 16 Phil. Rep. 137; Lozano v. Tan Suico, 23 Phil Rep. 16.)

The evidence offered on the trial to sustain the special defense should have been excluded under the objection of the plaintiff.

Evidence was introduced by the parties showing the value of the property removed by the defendant from the premises after the sale to the plaintiff. That evidence fully supports the contention of the appellant that the value was that alleged in the complaint, viz., P50,000.00. In the case of Hicks vs. Manila Hotel Co. Vol. 12 Off. Gaz. 2253, we said:

"It is the practise of this court, in case of reversal of a judgment dismissing the complaint on the merits, to examine the evidence and enter or order entered the judgment which the inferior court should have rendered; and, where the action is for a sum of money or damages, to find from the evidence the amount due or the damages suffered and to render or order the trial court to render judgment for that amount."

The question of damages and the amount thereof were fully ventilated in the trial court and here. We are, therefore, of the opinion that the case should be finally determined in this
233 court.

The judgment is reversed and the cause remanded to the court of First Instance with instructions to enter judgment in favor of the plaintiff and against the defendant in the sum of fifty thousand pesos (P50,000.00), with interest from the commencement of the action.

After the expiration of 20 days let judgment be entered in accordance herewith, and 10 days thereafter let the case be returned to the cour- whence it came for execution.

So ordered. *Torres J and Johnson J. concurred.*

Concurring Opinion.

CARSON, *J.*:

I concur.

Having some doubt as to whether the provisions of section 285, based as they are on similar provisions in the statute of frauds, should be applied so as to exclude the evidence relied upon by the defendants in this case, I have carefully examined that evidence and I am satisfied that it does not support their contentions as to the "true intent and agreement of the parties." On the contrary, I think it clearly discloses that these very contentions as to the meaning of the language used in the contract then about to be executed, in order to give it the meaning now claimed for it, was deliberately rejected by those charged with the execution of the contract on behalf of the Government, and that notwithstanding this re-
234 fusal to modify the language of the final draft of the contract so as to give it the meaning and effect now claimed for

it, the defendants there and then went forward with the proceedings, and with full knowledge of its terms solemnly executed it.

Under the circumstances I do not think defendants can be heard now to claim that the true meaning and intent of the contract as executed by them is any other than that which was given to it, (as their own evidence clearly discloses), by both parties at the time when it was finally executed.

This opinion is filed without prejudice to the preparation of an extended opinion hereafter if that be deemed advisable, for the purpose of discussing at length the evidence of record upon which defendants rely in support of their contentions.

Dissenting Opinion.

ARELLANO, *C. J.*, dissenting:

The Philippine Government, desiring to purchase the lands of the Philippine Sugar Estates Development Company, Limited, entered into negotiations with the representative of this company, Don Francisco Gutierrez Repide; and after long discussions of the terms, the Insular Government drew a draft of the contract, the original of which appears in this record as Exhibit No. 2 (folio 118). Don Francisco Gutierrez Repide made some corrections therein, in the form of additions and suppressions, and this draft, later on, became a notarial document dated December 22, 1903, which also
235 appears in the record as Exhibit A in English and B in Spanish (folios 7 and 14). Both the proposed draft Exhibit No. 2, as well as the final instrument Exhibit A-B, are a preliminary agreement in which the Philippine Sugar Estates Development Company, Limited, binds itself to sell and did sell to the Insular Government the eight haciendas belonging to said company. Amongst these eight haciendas is to be found the Calamba Estate, the particular sale of which, as it was executed and consum-ated by the public deed of sale finally executed on October 19, 1905, which is Exhibit C (folios 22 and 111 to 117), is the real matter in issue in this case.

On October 13, 1906, the Insular Government filed a complaint against the Philippine Sugar Estates Development Company, Limited, and the Dominican Order of the Philippines, asking the court to sentence the defendant company and its codefendant, the Dominican Order, jointly and severally, to pay the sum of fifty thousand pesos, together with the legal interest thereon from the date of the filing of the complaint. The complaint is based on the fact that on several dates, from that of the preliminary agreement, December 22, 1903, up to that of the final deed of sale of October 19, 1905, and even some time thereafter, the defendant proceeded to *raise*, take apart and remove from the places wherein they were located, the six mills mentioned in the deed of sale and called "Mapagon," "Calamias," "Mayapa," "Siranglupa," "Real," and "Punta," together with the machinery, apparatus, implements and accessories

of said mills, which were in good condition, as well as the tramway composed of rails, ties and other accessories which was also
236 raised, taken apart and removed, without permission or notice of the Insular Government.

The main issue herein is whether the said mills and railway were or were not included in the sale of the Calamba Estate.

Plaintiff affirms and sustains that they were. Defendants deny it and sustain that they never were or could ever have been.

The question turns upon the wording of the deed of sale of October 19, 1905. Plaintiff insists that the terms of the contract are clear, and by demurrer tried to prevent the defendant from bringing to the trial other evidence to show the facts alleged in the special defense set forth in its answer, to wit "the real intention and agreement of the parties," a thing which is expressly allowed by section 285, of Act No. 190, paragraph 1. The issue, therefore, was a legitimate case of interpretation of a contract, and it is not lawful to deprive the defendant of its right by simply taking for granted, as it is done by the sole affirmation of the plaintiff, that the terms of the contract are clear. They cannot be considered so clear when in spite of the fact that the plaintiff has so insistently maintained that the mills were specified in the deed of sale, yet the decision of the majority, so thoughtfully and discreetly written, does not rest on this ground,—which would be an extremely solid one if the terms of the contract were clear,—but restricts itself to the construction that they are included because the sale of the estate was made with all its improvements, and that such sugar mills are improvements.

237 According to article 1282 of the Civil Code, in order to judge of the intention of the contracting parties, consideration must chiefly be paid to those acts executed by said parties which are contemporary with and subsequent to the contract. And according to article 1282, however, general the terms of a contract be, they must not be held to include those things and cases different from those with regard to which the interested parties agreed to contract. In the draft of the preliminary contract (Exhibit No. 2 at folio 119) which appears to have been drawn up on December 18, or 20, 1903, we read: "This sale and conveyance shall include all the buildings, sugar and rice mills and machinery irrigation work, dams, tunnels, ditches, and all other improvements thereon * * * etc." In the formal preliminary agreement of December 22, 1903, (Exhibit A) appears: "This sale and conveyance shall include all the dwelling houses, farm houses, warehouses, camarines and other buildings, irrigation work, dams, tunnels, ditches, and all other improvements * * * etc." In this formal instrument the words: "sugar and rice mills and machinery," which appear stricken out in the original draft have been suppressed. This contemporary fact is extremely important. It cannot be disregarded, being, as it is one of the facts proved, the basis of the deed of sale of the Calamba Estate, dated October 19, 1905. It is the most conclusive and decisive proof that can exist as to how the parties thought and how they finally acted in regard to the sugar and rice mills and machinery

which, in the beginning, one of them intended to include in said draft, but which, later on, by the objection of the other, they
238 both expresses at last in the formal preliminary agreement their common intention not to include. If they did not expressly include them in the preliminary agreement, then it cannot even be presumed, without a subsequent proved reason, that they changed their minds when they executed the final deed of sale of the Calamba Estate on October 19, 1905, nearly two years later.

From the Division of Archives of the General Government a copy was brought into this record of a deed of sale which the Dominican Order made of its lands to another person on November 18, 1898, which deed had been registered in the Registry of Property. The description of the Calamba Estate therein contained this item: "In the barrio of Majada it (the Order) possesses the casa hacienda, a new building of strong material, with a large stone wall, and around it there are several coffee plants; and in various places—and this is the cause of the error,—the sugar mills, with all their camarines and accessories called "Mapagon," which is hydraulic; "Siranglupa," which is a steam mill; "Calamias" which is hydraulic; "Mayapa," a steam one; "Real," a steam one; and "Punta," which is also a steam mill; although it is believed that these mills have been destroyed, at least partially, by the insurgents," (folios 161 to 187). This was in November 1898.

On September 24, 1904, there took place an "interview of the Civil Governor of the Philippine Islands with Don Francisco Gutierrez Repide, manager of the Philippine Sugar Estates Development Company, Limited. There were present: The Solicitor General and Mr. Rafael Del Pan, of the firm Del Pan, Ortigas & Fisher,
239 in charge of the examination of the titles of the so called Friar Lands," folio 126 (Exhibit No. 4). The Civil Governor asked Mr. Gutierrez if he had read the forms of the contract which it was desired that his company should execute, and Mr. Gutierrez answered that there were some few things which he desired to discuss:

(*a*) "The word 'ingenio' or sugar mill is used," he said: "There are no sugar mills on those estates; therefore this word must be omitted. You will remember that on the 16th, when Governor Taft and the Commissioners held a session, the word 'sugar mill' 'ingenio' was inserted and I said that the company had no sugar mills. Then Commissioner Smith again asked if the company had any sugar mills and I answered him: no."

(*b*) There is another change to be made; "May have instead of "May have had."

(*c*) He speaks here of the delivery of certain title deeds: he says that for certain reasons, he cannot deliver them.

(*d*) New survey of several estates.

(*e*) The deduction of the 800 hectares from the Calamba Estate.

Mr. Del Pan: "Mr. Gutierrez differs as to five points. Two of these are insignificant, and, it seems to us, they are very easy to solve; but the others are of considerable importance."

The Civil Governor: "Yes, I thought that the first two or three

were small, probably mere changes in words." (Folio 126 and 128.)

As regard the other points, a long discussion followed, which can be seen up to folio 134; but not a word, however, about the sugar mills.

240 What Mr. Gutierrez says in September 24, 1904, seems to be justified, inasmuch as on October 8, 1903, according to a letter copied from the letter copy book of the company, at page 143 of the record, it appears that the steam machines which were in Calamba and which belonged to Messrs. Barranquero, Ibarra, Alvarez, and Amatriain had already been sold for eight thousand pesos to Mr. Enrique Rueda, together with two other small ones which were deposited in the casa hacienda, with their corresponding boilers, in the condition in which they were found, as well as Mr. Ibarra's tramway. In the condition in which they were found, of complete destruction, as has been shown in great detail at the trial of this case by the very witnesses of the Government, Inocencio Hernandez and Maximiliano Villanueva (folios 2 to 12 and 34 to 38). These are proven facts, to refute which no evidence had been offered or even attempted to be offered. Because in order to decide according to justice, it is important to take into consideration that, it being the duty of the plaintiff to prove the allegations in this complaint, no evidence had been offered by him with respect thereto. It had not been proven that the mills were removed between December 1903 and October 1905, nor that they were in perfect order and good repair; on the contrary, it appeared from the testimony of its own witnesses, the above-named Inocencio Hernandez and Maximiliano Villanueva, that they were all destroyed, and unfit for use, and that they themselves began to remove them from the places in which they were found, since the month of May 1903, a long time before the preliminary deed of sale of December of that same year was executed.

241 All these facts which now appear and were proved at the trial, show clearly what the state of things was when on October 19, 1905, the deed of sale of the Calamba Estate was executed. This instrument commences by reciting the title deeds of the estate, copied literally from the registered instrument of May 18, 1898, with the same description which, in regard to this matter has been cited above. The representative of the Philippine Sugar Estates Development Company, Limited, sells to the Governor-General of the Philippine Islands, the Calamba Estate, "the description of which, its extension and boundaries, as they appear in the title deeds of the same property, are as follows: "And the description appearing in the instrument of November 18, 1898 is copied with that part which says "* * * and in various places the sugar mills and all the camarines and accessories called "Mapagon," which is a hydraulic one; "Mayapa," a steam mill, etc., etc." This description is what, notwithstanding the precedent of the negotiations as already explained, has prompted the plaintiff to claim one single thing, and that is not the proper one to be claimed in the action brought. If the mills were plaintiff's because it had acquired them by purchase, plaintiff should have sued for delivery of the mills, or in default

thereof, that which it now asks, that is to say, their price or valu
But it does not ask for the delivery of the property, but only on
thing: to be paid fifty thousand pesos (P50,000.00). As far back a
1898, those mills, with the exception of that called "Real," had al
ready been partially destroyed by the revolutionists, according to th
old description which was made of the Calamba Estate in the deed o
November 18, 1898.

242 Plaintiff has asked for that price of fifty thousand peso
(P50,000.00) including therein that of the mill "Real,"
whereas this mill is intact, and is in the place in which it has al
ways been—on certain lands excluded from the sale of the Calamb
Estate, as it is so uniformly stated by Chas. N. Waet, Governmen
land agent, the two witnesses of the Government, Hernandez an
Villanueva, and Don Francisco Gutierrez. The latter, confirmin
what was said by the three former witnesses, said that the mill i
not a steam mill, but a hudraulic one, (Waet says the same), locate
in the place called Real, and forms part of the parcel of land whic
the company reserved to itself, and was situated within the propert
which belongs to the company (folio 51 T. T.). The testimony o
Waet, Hernandez and Villanueva can be seen at pages 102 and 10
of report "A" of Waet.

This part of the description of the old Calamba Estate, made i
November 1898, is the main foundation of the complaint. Let u
read paragraph 5 of the same:

"In the description of the Calamba Estate contained in the deed o
sale * * * it is expressly stated that, in various places thereo
there are the hydraulic sugar mills called Mapagon, and Calami
and the steam mills known as Mayapa, Siranglupa, Real and Punt
fear being expressed, however, that they may have been destroyed b
the revolutionists; * * *."

A doubt which, having been expressed in November 1898, b
came an absolute certainty in October, 1905, on which date it trul
appeared that they were destroyed, and surely, it was for th

243 reason and another above indicated, that they were not i
cluded in the deed of sale executed on this last date. It wa
furthermore, so clear and convincing that said description was n
the substantial act of the execution of the sale, or the enumeration o
the things which were sold, that in the conscientious opinion of th
majority, such foundation is not considered at all; the only thin
that was taken in consideration was the other foundation alleged i
the same paragraph 5 of the complaint to wit: that—there are in
cluded in this sale and are hereby ceded and conveyed to the Gover
ment of these Islands all the rights and interest which the vend
company has or may legally exercise in the buildings, irrigatio
works, water rights, improved lands, and all other improvements an
accessories which exist in the Hacienda, sold and conveyed by th
instrument.

If an estate is sold with all "the improvements existing on th
estate," the sugar mills on said estate shall also be considered sol
not as improvements, but as real property, by reason of their dest
nation or their attachment to the soil. "Real property consists o

First. * * * Fifth. Machinery, vessels, instruments, or utensils, destined by the owner of the estate to the industry or work he may carry on in a building or estate and which are directly required to satisfy the necessities of the said work." (Civ. Code Art. 334.) It would have been enough for plaintiff to prove at the trial that those mills, partially destroyed by the insurgents in 1898, were still on and formed part of the estate in the month of October 1905, or at least in October 1903, and a reason for this dissenting
244 opinion would be entirely lacking and the undersigned would have concurred in the foregoing decision. But plaintiff, far from adducing evidence to this effect, has, by the testimony of his own witnesses, proved just the opposite. And, furthermore, it has been established that both parties had assumed that the mills were not included in the sale because there were no mills on the estate in December, 1903, when the preliminary agreement was signed; nor in September, 1904, when that conference took place with the Civil Governor and the attorneys for the Government, in which these gentlemen said, when the other contracting party called attention to the fact that the Calamba estate had no sugar mills, that it did not matter and was of no importance and that the mention of the sugar mills in the wording of the deed of sale of the Calamba Estate could be corrected. But, however it may be, what the undersigned cannot possibly concur in, is in sentencing the defendant to pay any amount whatever as indemnity for the non-delivery of the mill "Real" inasmuch as it has been duly shown and proved that it is located on land which is not included in the sale of the Calamba estate, and such a sentence would be utterly unjust, taking for granted that which is not.

In view of these facts, so clearly established, and which, having been proved, perfectly explain the real intention and agreement of the parties, how could it be legal or rational to smother by means of a demurrer the answer in which such facts were set forth as a defense and as the real history of the matter? It is very dangerous to argue with generalities. No one questions that the ma-
245 chinery attached to or destined for the development of the land are just as much real property as the land itself and form a whole with it; but it has been properly said that: However general the terms of the contract be, there should not be understood as included therein things and cases different from those with regard to which the persons interested intended to contract. (Civ. Code art. 1283.)

One of the many decisions of the Supreme Court of Spain on the interpretation of the law in regard to contracts, is that of March 20, 1902, according to which, in order to determine the rights and obligations arising out of written contracts, attention must be paid not only to the strict grammatical meaning of the words used, but to the spirit informing them and the object which the contracting parties desired to attain, the intention prevailing over the words used when such intention may be inferred rationally and logically from the acts executed by the parties. The Judgment of Novem-

ber 21, 1908, is also important, since it decides that, when the interpretation of a contract is in issue, that given by the lower court must have preference if the appellant, in attacking said interpretation does not rely upon a manifest error incurred by such court. The trial court interpreted the contract in the following terms: After the suggestion which the Governor General made to the Solicitor General to the effect that he and Mr. Del Pan should hold a conference with Mr. Gutierrez to find out what changes and reforms the latter proposed in order to see if there was any real point of disagreement between them, the conference or interview
246 was again resumed in which neither Governor General Wright nor Mr. Del Pan made any objection to the change proposed by Mr. Gutierrez, both gentlemen stating that the matters involved in said change were so insignificant and so unimportant that they were simply a mere change of words. Not a word was spoken further about the sugar mills nor were these mentioned in the deed of sale of October 19, 1905. This shows without the slightest doubt that the parties, on striking out said words from the document, agreed not to include them in the sale as demanded by the representative of the vendor, because they were not legally part of the hacienda. As the conclusion to be drawn from the conferences held between the Civil Governor and Mr. Gutierrez as representative of the two contending parties who intervened in the execution of the deed of sale already mentioned on December 19, 1903, is that they had no intention to include therein the mills which are the subject matter of this case and are claimed by the plaintiff, said plaintiff has no right to -hem, and the complaint filed in this case cannot be sustained. (B. of E. 16 and 17.)

Not a word is to be found in appellant's brief alleging error in this interpretation of the lower court.

The judgment appealed from is affirmed, with costs.

(S'g'd) C. S. ARELLANO.

The parties were notified of the above decision on the 5th of March, 1915, and on March 13th, 1915, the attorney for the Philippine Sugar Estates Development Company, Limited filed the following:

247 *Motion for Rehearing.*

Now comes counsel for the Philippine Sugar Estates Development Company, Limited, and respectfully asks this Honorable Supreme Court to re-consider the decision rendered in this case and grant a re-hearing of the same.

The basis of this petition is:

That the decision rendered is contrary to the evidence adduced and it is contrary to law, for the reason that:

I.

There is no evidence showing that the railroad or the sugar mills

existed in the lands sold at the time of executing the final deed of sale.

There is also no evidence in regard to the fact that the defendant Company should have taken the said railroad and mills from the land sold after the sale was made.

This Honorable Court however, takes for granted these two facts:

That in the land sold there existed a railroad and some sugar mills at the time the deed of sale of said land was executed.

That the defendant after executing said deed of sale took and removed said mills and railroad.

The defendant has established both by oral and documentary proof:

248 That the two facts above stated, alleged in the complaint, were not true, since:

(*a.*) Said railroad and mills had been *raised*, taken apart and remains thereof carried in part and scattered about also in part by the revolutionists *on* or about the years 1898 to 1900.

(*b.*) That the defendant, before executing the contract of sale with the Government, had looked for and stored on its account the scattered remains of said railroad and mills, but could not find all of them.

(*c.*) That prior to that contract of sale, it stored in the town of Calamba, outside of the land sold, the pieces which could be found.

(*d.*) That prior to the execution of the sale of the land to the Government, if had already sold to one Enrique Rueda, the remains of the mills and railroad which it had been able to recuperate.

II.

The judgment of this Honorable Court takes as proved fact:

That both vendor (The Philippine Sugar Estates Development Company, Limited) and the purchaser (the Government of the Philippine Islands) understood and knew that within the lands sold there existed, amongst other property, a tramway and several sugar mills.

Although this might be inferred from generic phrases used in the contract when it says: "Improvements and Accessories," it is plain

249 that in the preliminaries of the contract of sale it was definitely established that no such things existed therein, that it was so understood and known by both parties and that on such understanding and knowledge they both executed the contract of sale.

In fact; neither the railroad, nor the mills appear mentioned in the preliminary agreement of December 22nd, 1903 (Exhibit B), notwithstanding the fact that such things were of greater significance and importance than others which are expressly named in said agreement.

The contract of October 19, 1905, (Exhibit C), mentions the old description of the Calamba Estate, which includes the mills, but when the real description of the property sold is made in the deed of sale, no mention is made of them any more.

It must be noted that mention of said mills is necessary since, on making the cession and transfer of all the rights and actions of the Company, it would seem indispensable to mention the right *or* action to reivindicate the mills which *is* that same document it is said *that* had been destroyed by the revolutionists.

Any possible ambiguity, even as regards whether or not the contracting parties included the mills in Exhibit C, is entirely explained by the statements contained in Exhibit 4 which bears an earlier date than that of Exhibit C.

The other Exhibits of the defendant have the same purpose.

It being established that what pertains to the mills were suppressed, it is not logical that if the Government desired to include them, it should have failed to mention them expressly in
250 the contract; but if the Government had such intention and, not expressing them specifically tried to include them subreptitiously using the phrase "Improvements and Accessories," (a thing which cannot be supposed since good faith must be always presumed), then by such phrase or expression the defendant was induced to error, making said defendant sign a contract which otherwise it would not have signed.

When the contracting parties prior to the contract have spoken of something definite and it has been established that that something did not exist or existed in a different manner, the presumption must be that that something was not included, or that it was included in the manner it said that it existed, unless a different thing is expressly stated in the contract; because it must be presumed that the transaction was closed in the ordinary course of business.

If the exhibits of the defendants had not existed the silence about the mills, could be considered explained by the words "and other improvements and accessories": but with the existence of such exhibits and there being no bad faith on the part of the Government, that silence proves that the parties did not include the mills in the contract.

III.

If, as it appears in contract Exhibit C, after the technical description mention is made of * * * all buildings and irrigation works, together with all water rights and town lots" what reason was there not to mention the six sugar mills and the railroad which were worth more than such irrigation
251 works, town lots, water works and buildings?

If the value of such railroad and mills was Fifty thousand pesos, as alleged in the complaint, this amount being 4% of the price of the estate (P1,385,443.00) was not so small that the mills should not deserve to be clearly specified in the contract which mentions other things of less importance.

As regards the value of the judgment, we shall say, with all the respect due to this Honorable Court, that the evidence appearing in the record is insufficient for such an important judgment, not because it is a matter of one single witness, but because it appears from the tes-

timony of the same persons who examined a shapeless heap of iron pieces, that he could not classify, nor weigh, nor distinguish with preciseness and that he was not an expert in sugar machinery.

We believe that, even if the complaint could be sustained, plaintiff should have established conclusively the value alleged and claimed. It would not be the rule to allege that the counter evidence of the defendant was not sufficient; plaintiff must rest on *his* own proofs.

In justice and equity the defendant must be acquitted from the complaint.

We ask this Honorable Court to reconsider the decision rendered in this case and to grant a new trial.

Manila, March 13th, 1915.

(Sgd.) ALFREDO CHICOTE,
Attorney for the Philippine Sugar Estates Development Company, Ltd.

252 Received copy this 13th of March, 1916. Office of the Attorney General, March 13, 1915.

Office of the Clerk,
Supreme Court of the Philippine Islands.

March 31, 1913.

SIR: This Supreme Court in its session of the same date passed the following resolution:

"The Court, considering the motion for a new trial filed by the Attorney of the "Philippine Sugar Estates Development Company, Limited" in case No. 7992 with the Government of the Philippine Islands said: The Motion for a New Trial in said case is Overruled.

You are hereby notified of said resolution.

(S'g'd) For the Clerk, M. DE LOS REYES,
Acting Deputy.

A. Chicote, Attorney General, Manila.

Exception and Notice of Appeal.

(Title of the Case Omitted.)

Now comes counsel for defendant and excepts to the reso-
253 lution of the Court overruling the petition for re-hearing and new trial filed by this counsel. "The Philippine Sugar Estates Development Company, Limited," asks that its exception against said resolution be duly recorded and at the same time announce- its intention to file a bill of errors and to carry this case on appeal to the Supreme Court of the United States.

Manila, April 3, 1915.

(S'g'd) ALFREDO CHICOTE,
Attorney for Defendant.

Office of the Attorney General, April 5, 1915.

(Title of the Case Omitted.)

Order.

The petition filed by counsel for the "Philippine Sugar Estates Development Company, Limited," et al., in the above entitled case, asking that its exception against the resolution of this Court of March 31, 1915, denying his motion for a new trial be duly recorded in this record and asking also that his intention to file a Bill of errors before the Supreme Court of the United States having been brought to attention of this Court,

The petition is granted.

Manila, April 8, 1915.

(S'g'd) GRANT T. TRENT,
Vacation Judge, Supreme Court of the P. I.

Attorney General, ALFREDE CHICOTE.

254 *Judgment.*

(Title of the Case Omitted.)

April 8, 1915.

The Court, having regularly acquired jurisdiction in the above entitled cause submitted by both parties for decision, after considering thereof by the Court upon the record, its decision and order for judgment having been filed on the 4th day of March, A. D. nineteen hundred and fifteen.

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 8th day of February, nineteen hundred and twelve, and from which the above entitled appeal was taken, be and the same is hereby received and let the case be returned to the Court of First Instance with instructions to render judgment in favor of plaintiff and against the defendant for the sum of P50,000.00 with interest from the date the action was filed.

It is further ordered that ——, recover from —— the sum of P— as costs.

(S'g'd) V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

Certified correct:

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk Supreme Court.

255 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7992.

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LTD., Defendant and Plaintiff in Error,
versus
THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff and Defendant in Error.

Petition for a Writ of Error.

To the Honorable Chief Justice of the Supreme Court of the Philippine Islands or any Associate Justice of said Court:

The petition of the Philippine Sugar Estates Development Company Ltd., respectfully shows that on the 8th day of April, 1915, the Supreme Court of the Philippine Islands rendered a final decree against your petitioner in a certain cause wherein the Government of the Philippine Islands was plaintiff and your petitioner was defendant, wherein the Government of the Philippine Islands claimed the value of certain sugar mills and railroad alleged to be
256 included in a certain deed of sale of a certain Estate sold and conveyed by your petitioner to said Government of the Philippine Islands and your petitioner denied that they were so included, putting in issue the interpretation of said deed of sale by your petitioner'- answer, that a decree was rendered by the Court of First Instance of Manila, dismissing plaintiff's complaint and sustaining the contention of your petitioner that said mills and railway were not included in said deed of sale and interpreting the real intention of the parties at the time of the execution of said deed of sale; that the said decree was reversed by a majority decision of the Supreme Court of the Philippine Islands, with a dissenting opinion by the Chief Justice, as will appear by reference to the record and proceedings in said cause and that the said Supreme Court is the highest court of said Philippine Islands in which a decision in said cause can be had.

And your petitioner claims the right to remove said decree to the Supreme Court of the United States by writ of error, under Section 10 of Act of Congress for the administration of the affairs of the Civil Government in the Philippine Islands, passed July 1st, 1902, because the value in controversy in this cause exceeds $25,000 United States currency, as appears from the affidavit of Jose Ma. Garcia Suarez, filed herewith and made part hereof; and because of the errors committed by said court, as appears by the record of said proceedings in said cause and in the assignment of errors, which are herewith submitted.

257 Your petitioner respectfully states that he has this day filed herewith the assignment of errors committed by this

Court and intended to be urged in the prosecution of this suit in error.

Wherefore, your petitioner prays the allowance of a writ of error returnable to the Supreme Court of the United States at Washington, D. C., for the correction of the errors complained of and that a duly authenticated transcript of the record, proceedings and papers herein, be sent to the United States Supreme Court.

Dated this 24 day of July, 1915.

[Seal Antonio Sanz, Notario Publico, Manila, Islas, Filipinas.]

ANTONIO M. OPISSO,
Attorney for Petitioner.

20 Plaza Moraga, Binondo, Manila.

The above writ of error is hereby allowed. Aug. 6, 1915.

(Signed) E. FINLEY JOHNSON,
Associate Justice.

Certified correct:
V. ALBERT,
Clerk Supreme Court.

258 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7992.

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LTD., Plaintiff in Error,

versus

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Defendant in Error.

UNITED STATES OF AMERICA,
City of Manila, Philippine Islands, ss:

Jose Ma. Garcia Suarez, manager of the plaintiff in error in the above entitled action, of lawful age, being duly sworn, on his oath says:

That the Philippine Sugar Estates Development Company Limited, is the plaintiff in error in the above entitled cause, that he is the manager of said plaintiff in error company; and that the value of the controversy, exclusive of all costs, exceeds the sum of $25,000 United States currency. JOSE MA. G. SUAREZ.

259 Subscribed and sworn to before me, this 23rd day of July, 1915, at Manila, Philippine Islands. Affiant exhibited his cedula No. F3465 issued at Manila, P. I., the 6th day of January, 1915.

[Seal Antonio Sanz, Notario Publico, Manila, Islas Filipinas.]

ANTONIO SANZ,
Notario Publico.

Reg. Not. No. 277 Fol. 61.

Mi nombramiento expira el 31 de Diciembre de 1916.

260 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7992.

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LTD., Plaintiff in Error,
versus
THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Defendant in Error.

Assignment of Errors.

Now comes the plaintiff in error in the above entitled action, to wit: The Philippine Sugar Estates Development Company Ltd., and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the Philippine Islands in the above entitled matter, there is manifest error in this, to wit:

I.

In stating that the demurrer filed by plaintiff to the special defense of the defendants should have been sustained.

II.

In establishing that defendants could not adduce oral
261 proof in regard to facts contemporary to the execution of the deed of sale of the Calamba Estate dated October 19, 1905, tending to show which was the real intention of the parties in regard to the meaning of the words "all other improvements and accessories" appearing in one of the clauses of said deed of sale.

III.

In not taking into account and considering, for the interpretation of a written contract and the declaration of the rights and obligations of the parties thereto, not only the words contained in said contract in their strict grammatical meaning but the spirit that prompted them and the purpose which said parties wanted to attain.

IV.

In not making the intention of the parties prevail in a written contract, when from the evidence adduced at the trial said inten-

tion can be ascertained rationally and logically from acts executed by those parties.

V.

In not sustaining the interpretation which the trial Court gave the contract, plaintiff having alleged no plain error in the following finding made by said trial court and in regard to the interpretation of said contract, to wit:

262 "After the suggestion which the Governor General made to the Solicitor General to the effect that he and Mr. Del Pan should hold a conference with Mr. Gutierrez to find out what change and reforms the latter proposed in order to see if there was any real point of disagreement between them, the conference or interview was again resumed in which neither Governor-General Wright nor Mr. Del Pan made any objection to the change proposed by Mr. Gutierrez, both gentlemen stating that the matters involved in said change were so insignificant and so unimportant that they were simply a mere change of words. Not a word was spoken further about the sugar mills nor were these mentioned in the deed of sale of October 19, 1905. This shows without the slightest doubt that the parties, on striking out said words from the document, agreed not to include them in the sale as demanded by the representative of the vendor, because they were not legally part of the Hacienda. As the conclusion to be drawn from the conferences held between the Civil Governor and Mr. Gutierrez as representative of the two contending parties who intervened in the execution of the deed of sale already mentioned on December 19, 1905, is that they had no intention to include therein the mills which are the subject matter of this case and are claimed by the plaintiff, said plaintiff has no right to them, and the complaint filed in this case cannot be sustained."

VI.

In finding that at the time of the execution of the contract of promise of sale on December 22, 1903, there existed on the Calamba Estate and the defendant owned within the same, five sugar mills called "Mapagon," "Calamias," "Mayapa," "Siranglupa," and "Punta," with the machinery, apparatus, implements and accessories thereof, as well as a tramway composed of rails, ties, and other accessories.

263 VII.

In finding that at the time of the execution of the deed of sale of the Calamba Estate on October 19, 1905, the defendant Company possessed within said estate the sugar mills called "Mapagon," "Calamias," "Mayapa," "Siranglupa," and "Punta," with the machinery, appliances, implements, and accessories thereof, as well as a tramway composed of rails, ties and other accessories.

VIII.

In finding that in the sale of the Calamba Estate, there was included in it the mill "Real," as if this mill had been located within said estate.

IX.

In finding that there is relevant evidence in the record about the value of the machinery, and relying on such evidence to establish that the value of said machinery was P-50,000 Philippine currency.

X.

In not considering the evidence adduced by defendants as evidence tending to establish the circumstance attending the execution
264 of the contract of sale of the Calamba Estate; which makes reference to the contract itself and which make- clear an intrinsic ambiguity.

XI.

In reversing the decision of the trial Court.

XII.

In rendering judgment against the defendants.

Wherefore, the said plaintiff in error pray- that said cause be reversed and judgment rendered in its favor, with costs.

Manila, P. I., July 24, 1915.

ANTONIO M. OPISSO.
Attorney for Plaintiff in Error.

265 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Justices of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a cause which is in said Supreme Court of the Philippine Islands, before you, or some of you, between the Government of the Philippine Islands, plaintiff and appellant, and The Philippine Sugar Estates Development Company Ltd., defendant and appellee, wherein a manifest error has happened, to the great damage of the said The Philippine Sugar Estates Development Company, Ltd., as by its complaint appears, we being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 6th day of December next, in the said

Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward Douglass White, Chief
266 Justice of the United States, this 6th day of August, in the year of our Lord one thousand nine hundred and fifteen.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

267 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7992.

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LTD.,
Plaintiff in Error,
versus
THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Defendant in Error.

Citation.

The President of the United States to the Government of the Philippine Islands, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, at the City of Washington, D. C., within one hundred and twenty (120) days from the date of this writ, pursuant to a writ of error duly allowed by the Supreme Court of the Philippine Islands, and filed in the Clerk's office of said Court on the 24 day of July, 1915, in a cause wherein The Philippine Sugar Estated Development Company Ltd. is plaintiff in error and you are defendant in error, to show cause, if any, why the decree rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and
268 why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Associate Justice of the Supreme Court of the Philippine Islands, this 6 day of August in the year of our Lord one thousand nine hundred and fifteen.

E. FINLEY JOHNSON,
Associate Justice.

Service of a copy of the within citation is hereby admitted this 24 day of August, 1915.

RAMÓN AVANCEÑA,
Fiscal General.

269 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7992.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff and Appellant,
versus
THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LTD. et al., Defendants and Appellees.

Petition for an Appeal to the Supreme Court of the United States.

To the Honorable Chief Justice of the Supreme Court of the Philippine Islands or any Associate Justice of said Court:

The petition of the Philippine Sugar Estates Development Company, Ltd., respectfully shows that on the 8th day of April, 1915, the Supreme Court of the Philippine Islands rendered a final decree against your petitioner in a certain cause wherein The Government of the Philippine Islands was plaintiff and your petitioner was defendant, wherein the Government of the Philippine Islands claimed the value of certain sugar mills and railroad alleged to be in-
270 cluded in a certain deed of sale of a certain Estate sold and conveyed by your petitioner to said Government of the Philippine Islands and your petitioner denied that they were so included, putting in issue the interpretation of said deed of sale by your petitioner's answer; that a decree was rendered by the Court of First Instance of Manila, dismissing plaintiff's complaint and sustaining the contention of your petitioner that said mills and railway were not included in said deed of sale and interpreting the real intention of the parties at the time of the execution of said deed of sale; that the said decree was reversed by a majority decision of the Supreme Court of the Philippine Islands, with a dissenting opinion by the Chief Justice, as will appear by reference to the record and proceedings in said cause and that the said Supreme Court is the highest court of said Philippine Islands in which a decision in said cause can be had.

And your said petitioner, conceiving itself aggrieved by said decree of the Supreme Court of the Philippine Islands, made and entered on the 8th day of April, 1915, in the above entitled cause, as hereinbefore alleged, does hereby appeal from said order and decree to the Supreme Court of the United States, under Section 10 of the Act of Congress of July 1st, 1902, entitled "The Philippine Bill," because the value in controversy in this cause exceeds the sum of $25,000 currency of the United States, as appears from the affidavit of Jose Ma. Garcia Suarez, filed herewith and made a part hereof, and because of the reasons specified in the assignment of er-
271 rors filed herewith, and your said petitioner prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly

authenticated may be sent to the Supreme Court of the United States.

Dated this 24 day of July, 1915.

ANTONIO M. OPISSO,
Attorney for Petitioner.

20 Plaza Moraga, Binondo, Manila.

The foregoing petition is hereby allowed. Aug. 6, 1915.
(Signed) E. FINLEY JOHNSON,
Associate Justice Supreme Court of the Philippines.

Certified correct:
V. ALBERT,
Clerk Supreme Court.

272 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. —.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff and Appellant,
versus
THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LTD., et al., Defendants and Appellees.

UNITED STATES OF AMERICA,
City of Manila, Philippine Islands, ss:

Jose Ma. Garcia Suarez, manager of the defendant in the above entitled action, of lawful age, being duly sworn, on his oath says:

That The Philippine Sugar Estates Development Company, Ltd., is the defendant in the above entitled cause; that he is the manager of said defendant company; and that the value of the controversy, exclusive of all costs, exceeds the sum of $25,000 United States currency.

JOSE MA. G. SUAREZ.

273 Subscribed and sworn to before me, this 23rd day of July, 1915, at Manila, Philippine Islands. Affiant exhibited his cedula No. F3465 issued at Manila, P. I., the 6th day of January, 1915.

[Seal Antonio Sanz, Notario Público, Manila, Islas Filipinas.]
ANTONIO SANZ,
Notario Público.

Reg. Not. No. 278, Fol. 61.

Mi nombramiento expira el 31 de Diciembre de 1916.

274 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7992.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff and Appellee,

versus

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LTD., et al., Defendants and Appellants.

Assignment of Errors.

Now comes the defendant and appellant in the above entitled action, to wit: The Philippine Sugar Estates Development Company, Ltd., and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the Philippine Islands in the above entitled matter, there is manifest error in this, to wit:

I.

In stating that the demurrer filed by plaintiff to the special defense of the defendants should have been sustained.

II.

In establishing that defendants could not adduce oral proof
275 in regard to facts contemporary to the execution of the deed of sale of the Calamba Estate dated October 19, 1905, tending to show which was the real intention of the parties in regard to the meaning of the words "all other improvements and accessories" appearing in one of the clauses of said deed of sale.

III.

In not taking into account and considering, for the interpretation of a written contract and the declaration of the rights and obligations of the parties thereto, not only the words contained in said contract in their strict grammatical meaning but the spirit that prompted them and the purpose which said parties wanted to attain.

IV.

In not making the intention of the parties prevail in a written contract, when from the evidence adduced at the trial said intention can be ascertained rationally and logically from acts executed by those parties.

V.

In not sustaining the interpretation which the trial Court gave the contract, plaintiff having alleged no plain error in the following finding made by said trial court and in regard to the interpretation of said contract, to wit:

276 "After the suggestion which the Governor General made to the Solicitor General to the effect that he and Mr. Del Pan should hold a conference with Mr. Gutierrez to find out what change and reforms the latter proposed in order to see if there was any real point of disagreement between them, the conference or interview was again resumed in which neither Governor-General Wright nor Mr. Del Pan made any objection to the change proposed by Mr. Gutierrez, both gentlemen stating that the matters involved in said change were so insignificant and so unimportant that they were simply a mere change of words. Not a word was spoken further about the sugar mills nor were these mentioned in the deed of sale of October 19, 1905. This shows without the slightest doubt that the parties, on striking out said words from the document, agreed not to include them in the sale as demanded by the representative of the vendor, because they were not legally part of the Hacienda. As the conclusion to be drawn from the conferences held between the Civil Governor and Mr. Gutierrez as representatives of the two contending parties who intervened in the execution of the deed of sale already mentioned on December 19, 1905, is that they had no intention to include therein the mills which are the subject matter of this case and are claimed by the plaintiff, said plaintiff has no right to them, and the complaint filed in this case cannot be sustained."

VI.

In finding that at the time of the execution of the contract of promise of sale on December 22, 1903, there existed on the Calamba Estate and the defendant owned within the same, five sugar mills called "Mapagon," "Calamias," "Mayapa," "Siranglupa," and "Punta," with the machinery, apparatus, implements and accessories thereof, as well as a tramway composed of rails, ties, and other accessories.

277 VII.

In finding that at the time of the execution of the deed of sale of the Calamba Estate on October 19, 1905, the defendant Company possessed within said estate the sugar mills called "Mapagon," "Calamias," "Mayapa," "Siranglupa," and "Punta," with the machinery, appliances, implements, and accessories thereof, as well as a tramway composed of rails, ties and other accessories.

VIII.

In finding that in the sale of the Calamba Estate, there was in-

cluded in it the mill "Real," as if this mill had been located within said estate.

IX.

In finding that there is relevant evidence in the record about the value of the machinery, and rely on such evidence to establish that the value of said machinery was P50,000 Philippine currency.

X.

In not considering the evidence adduced by defendants as evidence tending to establish the circumstances attending the execution
278 of the contract of sale of the Calamba Estate; which makes reference to the contract itself and which make- clear an intrinsic ambiguity.

XI.

In reversing the decision of the trial Court.

XII.

In rendering judgment against the defendants.

Wherefore, the said defendant and appellant pray- that said cause be reversed and judgment rendered in its favor, with costs.

Manila, P. I., July 24, 1915,

ANTONIO M. OPISSO,
Attorney for Appellant.

279 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7992.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff and Appellee,
versus
THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LTD., et al., Defendants and Appellants.

Citation.

The President of the United States to the Government of the Philippine Islands, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, at the City of Washington, D. C., within one hundred and twenty (120) days from the date of this writ, pursuant to an appeal duly allowed by the Supreme Court of the Philippine Islands, and filed in the Clerk's office of said

Court on the 8th day of July, 1915, in a cause wherein The Philippine Sugar Estates Development Company, Ltd., is appellant and you are appellee, to show cause, if any, why the decree ren-
280 dered against said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Associate Justice of the Supreme Court of the Philippine Islands, this 6 day of August in the year of our Lord one thousand nine hundred and fifteen.

E. FINLEY JOHNSON,
Associate Justice.

Service of a copy of the within citation is hereby admitted this 24 day of August 1915.

RAMÓN AVANCEÑA,
Fiscal General.

281 Supreme Court, Philippine Islands, Clerk's Office Received Jul- 24, 1915, 12.24 P. M.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7992.

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, Plaintiff in Error,

versus

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Defendant in Error.

Know all men by these presents, that we, The Philippine Sugar Estates Development Company, Limited, as principal, and Pedro de Errasquin and Buenaventura Campa, as sureties, are held and firmly bound unto the Government of the Philippine Islands in the sum of Five Hundred Dollars ($500) United States currency, to be paid to said obiigee, its successors, representatives and assigns, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and assigns, jointly and severally by these presents.

Sealed with our seals and date- this this 24 day of July, A. D., 1915.

Whereas the above named plaintiff in error has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment in the above entitled action by the Supreme Court of the Phiiippine Islands.

282 Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute his writ of error to effect, and answer all costs and damages, if it shall fail to

make good its plea, then this obligation shall be void: otherwise, to remain in full force and effect.

W. B. CAMPA.
PEDRO DE ERRASQUIN OBRITZ.
THE PHILIPPINE SUGAR ESTATES DEVELOPMENT CO., LMTD.
JOSE MA. G. SUAREZ, *Gerente.*

Signed, sealed and delivered in the presence of:
F. R. ALMCLO.
CARLOS [illegible].

UNITED STATES OF AMERICA,
City of Manila, Philippine Islands, ss:.

Pedro de Errasquin and Buenaventura Campa, the sureties who executed the foregoing bond being first duly sworn upon oath, each for himself says: That he is a resident and property holder in the Philippine Islands, that he is solvent for the amount men-
283 tioned in said obligation as penalty, apart of all his debts and obligations and of property subject to execution, and that he executed the foregoing bond as an act of his own free will and deed.

W. B. CAMPA.
PEDRO DE ERRASQUIN OBRITZ.

Subscribed and sworn to before me, this 24 day of July, 1915, at Manila, Philippine Islands. Affiant P. de Errasquin exhibited his certificate of cedula No. F43-3 issued at Manila, the 7 day of Enero, 1915; B. Campa did not exhibit any being over 60 years of age.

[Seal Antonio M. Opisso, Manila, Philippine Islands.]

ANTONIO M. OPISSO,
Notario Publico.

Reg. Not. No. 210, Fol. 48.

Mi Nombramiento Expiria El 31 de Deciembre de 1916.

Aug. 6, 1915.

The foregoing bond is hereby approved. Attention is also hereby called to the agreement hereto attached and marked exhibit "A."

(Signed) E. FINLEY JOHNSON,
Associate Justice.

Certified correct:
V. ALBERT,
Clerk Supreme Court.

284 Ex. "A."

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7992.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff and Appellee,
versus
THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, Defendant and Appellant.

Agreement.

Whereas the Supreme Court of the Philippine Islands, has on March 5th, 1915, rendered decision in the above entitled case, revoking the sentence of the Court a quo and ordering that judgment be entered in favor of the plaintiff and against the defendant for the sum of Fifty Thousand Pesos (P150,000.00) Philippine Currency;

Whereas on the 8th of April, 1915, judgment was entered in accordance with the decision referred to in the previous paragraph;

Whereas, The Philippine Sugar Estates Development Company, Limited, has appealed from the decision and judgment rendered by the Supreme Court of the Philippine Islands to the Supreme Court of the United States and has filed the proper petitions for the allowance of the appeal and writ of error with one of the Justices of this Court;

Whereas, The Philippine Sugar Estates Development Company, Limited, has requested of the party plaintiff, that is, from
285 the attorneys of the Government of the Philippine Islands, not to prosecute any further proceeding in respect to the judgment rendered in the above entitled case while the appeal and writ of error interposed by "The Philippine Sugar Estates Development Company, Limited," to the Supreme Court of the United States of America is pending decision;

Now, Therefore, the undersigned, in behalf of their respective parties, defendant in error and appellee and plaintiff in error and appellant in the above entitled case, covenant:

That in consideration of the appeal interposed to the Supreme Court of the United States of America by "The Philippine Sugar Estates Development Company, Limited," and in consideration furthermore of the solvency of this Corporation, the Government of the Philippine Islands will abstain itself from executing the judgment rendered in this case until such time as the Supreme Court of the United States of America shall not affirm that rendered by the Supreme Court of the Philippine Islands; Provided, that, this agreement shall be null and will not be binding if the appellant fails to prosecute the appeal with due diligence.

It is also hereby covenanted, that this agreement and covenant shall be attached to the records after it has been reported to the Supreme Court of the Philippine Islands.

In Witness Whereof, we sign these presents in Manila, this 6th day of August, 1915.

(Sgd.) RAMÓN AVANCEÑA,
Attorney General, Attorney for Plaintiff.

(Sgd.) ANTONIO M. OPISSO,
Attorney for Defendant.

286 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in a certain cause pending in the said Court, wherein The Government of the Philippine Islands is plaintiff and appellant, and The Philippine Sugar Estates Development Company, Ltd. et al. were defendants and appellees, a final judgment was rendered by said Supreme Court on the 8th day of April, 1915, in favor of the said The Government of the Philippine Islands, and against the said The Philippine Sugar Estates Development Company, Ltd. et al., and that on the twenty-fourth day of July, 1915, the said The Philippine Sugar Estates Development Company, Ltd., et al, sued out a writ of error to said Supreme Court, directed to remove said cause to the Supreme Court of the United States.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Supreme Court at Manila, P. I., this fourth day of September, A. D. one thousand nine hundred and fifteen.

[Seal Corte Suprema, Islas Filipinas.]

(S'g'd) V. ALBERT,
rm. *Clerk of the Supreme Court of the Philippine Islands.*

A true copy:
V. ALBERT,
Clerk Supreme Court.

287 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in a certain cause pending in said Court, wherein The Government of the Philippine Islands is plaintiff and appellant, and The Philippine Sugar Estates Development Company, Ltd., et al. were defendants and appellees, a final judgment was rendered by said Supreme Court on the 8th day of April, 1915, in favor of the said The Government of the Philippine Islands, and against the said The Philippine Sugar Estates

Development Company, Ltd. et al., and that on the twenty-fourth day of July, 1915, the said The Philippine Sugar Estate Development Company, Ltd., et al. prayed for an order allowing an appeal on its behalf to the Supreme Court of the United States, which was duly allowed on the 6th day of August, 1915.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Supreme Court at Manila, P. I., this fourth day of September, A. D. one thousand nine hundred and fifteen.

[Seal Corte Suprema, Islas Filipinas.]

(S'g'd) V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

A true copy:
V. ALBERT,
Clerk Supreme Court.

288 Supreme Court, Philippine Islands, Clerk's Office. Filed Oct. 18, 1915, 11.40 *P.* M.

R.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. 7992.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff and Appellee,

versus

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, et al., Defendants and Appellants.

The attorneys for parties appellant and appellee hereby agree that of the additional notarial act of November 8, 1898, complementary to the deed executed on August 8, 1898, and offered in evidence by the attorney for the defendant and appellant, only the introductory part and the description of the estate of Calamba, and the closing clause, be included in the transcript of the record, all the rest of said notarial act being irrelevant and immaterial to the issues in this case, inasmuch as they refer to other estates wholly independent from the estate of Calamba.

In Witness Whereof, parties appellant and appellee sign this agreement on this 18 day of October, 1915.

RAMÓN AVANCEÑA,
Attorney General.
ANTONIO M. OPISSO.

289 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 7992.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff and Appellee,
versus
THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, et al., Defendant- and Appellant-.

Now comes defendant appellant, Philippine Sugar Estates Development Company, Limited, and respectfully asks this Court to grant an extension of time for the return of the summons and appeal for the Supreme Court of the United States on the ground that due to the fact that the record has had to be translated into English and the translation having just finished it is materially impossible to have the transcript of the record before the Supreme Court of the United States on the date set in the summons.

Wherefore the undersigned respectfully ask- the Hon. Court to issue a new summons in the above entitled case.

Respectfully submitted.

(S'g'd) ANTONIO M. OPISSO.

Manila, P. I., Nov. 11, 1915.

290 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 7992.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff and Appellant,
versus
THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LTD., and Others, Defendants and Appellees.

Order.

Upon consideration of the foregoing petition, and it appearing that there is good cause therefor, it is hereby ordered that the time for docketing the transcript of the above entitled cause in the office of the Clerk of the Supreme Court of the United States at Washing-

ton, D. C., be and the same is hereby enlarged so that the same shall not expire before the 28th day of June, 1916.

Manila, P. I., March 1, 1916.

(S'g'd) SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

A true copy:
V. ALBERT, *Clerk.*

291 THE UNITED STATES OF AMERICA:

The Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing two hundred ninety (290) pages of typewritten matter contain a true and correct translation and transcript of the record and proceedings had in the Court of First Instance of Manila and in the Supreme Court of the Philippine Islands in the case of The Government of the Philippine Islands, Plaintiff and Appellant, versus The Philippine Sugar Estates Development Company, Limited, et al., Defendants and Appellees.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court this 10th day of May, A. D. 1916.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

Endorsed on cover: File No. 25,351. Philippine Islands Supreme Court. Term No. 521. The Philippine Sugar Estates Development Company, Ltd., plaintiff in error and appellant, vs. The Government of the Philippine Islands. Filed June 12th, 1916. File No. 25,351.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 189.

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, PLAINTIFF IN ERROR AND APPELLANT,

vs.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, DEFENDANT IN ERROR AND APPELLEE.

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE PLAINTIFF IN ERROR AND APPELLANT.

This case has been brought to this Court on appeal from and writ of error to the Supreme Court of the Philippine Islands.

I.

Statement of the Case.

Plaintiff in error and appellant seeks to reverse the judgment rendered by the Supreme Court of the Philippine Islands in a certain case in which the Government of the Philippine Islands was plaintiff and the Philippine Sugar Estates Development Company, Limited, and the Dominican Order of Friars were defendants. The complaint filed in this case by the Government of the Philippine Islands (which hereafter shall be called "the appellee") on the 13th day of October, 1903, in the Court of First Instance of the City of Manila, sought to recover from the Philippine Sugar Estates Development Company, Limited, and from the Dominican Order of Friars of the Philippine Islands, the sum of fifty thousand (50,000) pesos, the alleged value of certain sugar mills, their accessories, and appurtenances, as well as a railroad alleged to be on and to form part of an estate called the *Hacienda of Calamba*, sold by the appellant to the Government of the Philippine Islands on the 19th day of October, 1905. Accompanying the complaint the appellee filed two exhibits, forming part thereof, one of said exhibits being a certified copy of the preliminary agreement of sale executed between appellant and appellee on the 22nd day of December, 1903, and the other being the final deed of sale of the Calamba estate, executed as hereinbefore said, on the 19th day of October, 1905, between the same parties.

This complaint was demurred to by appellant, who was then defendant in said action, and upon the demurrer being overruled, said appellant on the 10th day of December, 1906, filed an answer denying generally and specifically all the facts stated in the complaint with the exception of the first, second, third, fourth and sixth. This answer was on July 18, 1908, amended by the appellant, the amendment

consisting in the allegation of a special defense which, having been demurred to by the Government and the demurrer sustained, was amended by a new answer filed on the 11th day of February, 1909. In this answer appellant denied generally and specifically each and every one of the facts alleged in the complaint, and as a special defense stated:

1st. That prior to the signing of the preliminary agreement of December 22, 1903, the parties had agreed not to include in the sale of the Calamba estate the railroad and the sugar mills, the reason for this being that the same had already been sold by the appellant to another person, and that in the appraisal of the property sold—that is, in the appraisal of the estate—the value of the property specifically claimed in the complaint was not included or paid.

2d. That on the draft of the final deed of sale filed with and made part of the complaint, it was understood by the contracting parties that the sugar mills and accessories were not to be considered as included in the sale, and that it was never the intention of the parties to include said railway and sugar mills under the general terms "all other improvements and accessories which exist in and on the hacienda," contained in said deed of sale.

3d. That for the reasons above stated the defendants impugned the instrument attached to the complaint in that the same might give, and in fact did give, rise to an interpretation which is contrary to and does not express the real intention and agreement of the contracting parties.

This answer was demurred to by the appellee. The demurrer was sustained as to the first allegation of the special defense, but overruled as to the second and third allegations.

Upon said complaint and the answer denying all of the facts alleged in the complaint and setting up the special defense contained in the second and third points above quoted,

the case went to trial; and after hearing the oral evidence presented by plaintiff and defendant (appellee and appellant herein), and after considering the documentary evidence presented by both parties, the judge of the Court of First Instance of Manila, on the 25th of October, 1911, rendered a decision dismissing the complaint and acquitting the defendants from all the charges preferred against them by plaintiff.

Against this decision the appellee appealed to the Supreme Court of the Philippine Islands, alleging as errors:

1st. The overruling of demurrer filed by appellee (then plaintiff) to the special defense alleged in the answer of the appellant (then defendant).

2d. The admission of evidence adduced by defendant tending to modify or vary the terms of the written contract entered into between appellant and appellee.

3d. Not sentencing the appellant (then defendant) to the payment of the sum of fifty thousand (50,000) pesos, the value of the railroad and sugar mills claimed in the complaint.

Upon these three errors the case was submitted to the Supreme Court of the Philippine Islands, which, on March 4, 1915, rendered a decision reversing the decision of the lower court, sustaining the second error alleged by appellee, and sentencing the appellant to pay the sum of fifty thousand (50,000) pesos, with interest, from the 13th day of October, 1903, at the rate of 6 per cent per annum. The Chief Justice of the Supreme Court of the Philippine Islands dissented, and his dissenting opinion was entered on the same date as the decision of the majority, and forms part of this record. To such decision of the majority of the Supreme Court of the Philippine Islands the appellant excepted and moved for a rehearing (Rec., pp. 132-135), and

upon said motion being overruled defendant filed his exception and appealed the case to this honorable Court.

The facts which originated the present suit and which are submitted to the consideration of this Court based upon the evidence and allegations adduced by the parties in the lower court, are the following:

II.

Statement of Facts.

The Philippine Sugar Estates Development Company, Limited, appellant in this case, is a corporation duly organized, registered, and doing business according to the laws in force in the Philippine Islands.

Prior to the year 1903, the Philippine Sugar Estates Development Company, Limited, was the owner by virtue of a transfer and cession made to it by the Dominican Order in the Philippine Islands, of eight large tracts of land, generally known as *haciendas*, situated respectively in the towns of Biñan, Santa Rosa, and Calamba, of the Province of Laguna; Naic and Santa Cruz de Malabon, of the Province of Cavite; Lolomboy and Santa Maria de Pandi, of the Province of Bulacan; and Orion, of the Province of Bataan. The description of the Calamba estate, one of the eight haciendas above named, as contained in the old deeds, recited the fact that there were at different places—

> "some sugar mills with all outbuildings and accessories named Mapagon, an hydraulic mill. Mayapa, a steam mill, Calamias, an hydraulic mill, Sirang-lupa, a steam mill, Real, a steam mill, and Punta, also a steam mill; though it is believed that these mills were destroyed, in part at least, by the revolutionists" (Rec., p. 10, also Rec., p. 92).

About the beginning of the year 1903 the president of the appellant company gave orders to remove from the said

Calamba estate all the machinery of the above-named sugar mills, and also the tram rails which the appellant had thereon (Rec., p. 70, and Rec., p. 96), all of which had been broken up and destroyed (Rec., pp. 54-56, 67-69), and according to said order the machinery and rails were removed, this work being commenced in May, 1903 (Rec., pp. 52, 53).

On October 8, 1903, the appellant sold all these sugar mills and the tramway to one Enrique Rueda for the sum of eight thousand (8,000) pesos, Philippine currency (Rec., p. 96). In the same year, 1903, after the aforesaid order of removal had been given, the appellant entered into negotiations with the representatives of the Government of the Philippine Islands (the appellee, in this case), for the sale of the eight above-named haciendas or estates, and during the course of the negotiations the representatives of the appellee submitted to the representative of the appellant a draft of the agreement of sale (Rec., facsimile plates inserted between pp. 42 and 43), which contained a paragraph reading in part as follows:

> "This sale and conveyance shall include all the buildings, sugar and rice mills and machinery, irrigation works, dams, tunnels, ditches, and all other improvements thereon, etc., etc.";

but objection having been made by said representative of appellant to the inclusion in the above quoted paragraph of the words "sugar and rice mills and machinery," for the reason that they had already been sold to one Enrique Rueda (Rec., pp. 73-74), said words were stricken off (see facsimile inserted between pages 42 and 43), and when the preliminary agreement of sale was finally signed by the representatives of both parties on December 22, 1903, the paragraph in question read as follows:

> "This sale and conveyance shall include all the dwelling houses, farm houses, warehouses, camarines, and outbuildings, irrigation works, dams, tunnels, ditches, and all other improvements, together with all

water and other rights and all hereditaments belonging to the company on every part of the estates hereby agreed to be conveyed" (Rec., p. 5).

On September 24, 1904, the representatives of both appellant and appellee (Rec., p. 43) held conferences to discuss the final deed of sale of the Hacienda de Calamba, one of the eight haciendas agreed to be conveyed by the appellant to the appellee, and inasmuch as at that conference (Rec., p. 44) the words "sugar mills" seemed to appear in the draft of the conveyance, the representative of the appellant again objected to the inclusion of said words and his objection was accepted by the representatives of the appellee (Rec., pp. 45, 101).

And thus, in October, 1905, in partial compliance with the preliminary agreement of sale of December 22, 1903, the final deed of sale of the Calamba estate was executed. In said deed of sale the property sold is described twice. The first description is the old description of the estate as it appears in the old title deeds of the hacienda (Rec., pp. 9, 10, 91, 92), and although in it the name and designation of several sugar mills is given and inventoried as located on the hacienda, yet it is said (Rec., pp. 10, 92) that *"it is believed that these mills have been destroyed, at least partially, by the insurgents."*

After giving the aforesaid description as contained in the old title deeds, a new one is given purporting to be an exact description of the estates conveyed and sold *"according to the survey and measurements of the said property recently made by the engineers and surveyors* of the Philippine Government" (Rec., p. 10). And although the deed of sale recites in the conveyance as including in the sale "all rights or actions which the corporation has, *or may legally have,* in and to all buildings, and irrigations works, together with all water rights, town lots and other improvements and hereditaments existing *in and on* the hacienda," no express reference is made to any railroad or sugar mills, nor are

these found described in the new description made of said estate.

All the foregoing facts were found as proved by the Court of First Instance of Manila and upon them the complaint filed by the appellee against the appellant was dismissed, but, as we have already stated before, this decision was reversed by the Supreme Court of the Philippine Islands upon the ground that these facts could not be alleged or proved or admitted in evidence, because they tended to vary the terms of the written agreement. The Philippine Sugar Estates Development Company, Limited, has appealed to this honorable Supreme Court against such ruling of the Supreme Court of the Philippine Islands, and in its appeal appellant begs to submit the following:

III.

Statement of Errors.

The Supreme Court of the Philippine Islands in the decision rendered in the above entitled case erred:

I.

In stating that the demurrer filed by plaintiff (now appellee) to the special defense of the defendant (now appellant) should have been sustained.

II.

In establishing that defendants could not adduce oral proof in regard to facts contemporary to the execution of the deed of sale of the Calamba estate dated October 19, 1905, tending to show which was the real intention of the parties in regard to the meaning of the words "all other improvements and accessories," appearing in one of the clauses of said deed of sale.

III.

In not taking into account and considering for the interpretation of a written contract and declaration of rights and obligations of parties thereto, not only the words contained in said contract in their strict grammatical meaning, but the spirit that prompted them and the purpose which said parties wanted to agree upon.

IV.

In not making the intention of the parties prevail in a written contract when from the evidence adduced at the trial said intention can be ascertained rationally and logically from acts executed by those parties.

V.

In not sustaining the interpretation which the trial court gave the contract, plaintiff having alleged no plain error in the following finding made by said trial court and in regard to the interpretation of said contract, to wit:

> "After the suggestion which the Governor General made to the Solicitor General, to the effect that he and Mr. Del-Pan should hold a conference with Mr. Gutierrez to find out what change and reforms the latter proposed in order to see if there was any real point of disagreement between them, the conference or interview was again resumed in which neither Governor General Wright nor Mr. Del-Pan made any objection to the change proposed by Mr. Gutierrez, both gentlemen stating that the matters involved in said change were so insignificant and so unimportant that they were simply a mere change of words. Not a word was spoken further about the sugar mills nor were these mentioned in the deed of sale of October 19, 1905. This shows without the slightest doubt that the parties, on striking out said words from the document, agreed not to include

them in the sale as demanded by the representative of the vendor, because they were not legally part of the *Hacienda*. As the conclusion to be drawn from the conferences held between the Civil Governor and Mr. Gutierrez as representatives of the two contending parties who intervened in the execution of the deed of sale already mentioned on December (October?) 19, 1905, is that they had no intention to include therein the mills which are the subject matter of this case, and are claimed by the plaintiff, said plaintiff has no right to them, and the complaint filed in this case cannot be sustained."

VI.

In finding that at the time of the execution of the contract of promise of sale on December 22, 1903, there existed on the Calamba estate, and the defendant owned within the same, five sugar mills, called Mapagon, Calamias, Mayapa, Siranglupa, and Punta, with the machinery, apparatus, implements and accessories thereof, as well as a tramway composed of rails, ties and other accessories.

VII.

In finding that at the time of the execution of the deed of sale of the Calamba estate on October 19, 1905, the defendant company possessed within the said estate the sugar mills called Mapagon, Calamias, Mayapa, Siranglupa, and Punta with the machinery, appliances, implements and accessories thereof, as well as a tramway composed of rails, ties and other accessories.

VIII.

In finding that in the sale of the Calamba estate there was included in it the mill "Real," as if this mill had been located within said estate.

IX.

In finding that there is relevant evidence in the record about the value of the machinery, and relying on such evidence to establish that the value of said machinery was fifty thousand (50,000) pesos, Philippine currency.

X.

In not considering the evidence adduced by the defendants as evidence tending to establish the circumstances attending the execution of the contract of sale of the Calamba estate; which makes reference to the contract itself, and which makes clear an intrinsic ambiguity.

XI.

In reversing the decision of the trial court.

XII.

In rendering judgment against the defendants.

BRIEF OF THE ARGUMENT FOR THE APPELLANT.

In the argument we beg to submit the following points:

Preliminary.

This is a case which falls under the jurisdiction of a Court of Equity.

1st. Because it has to do with the interpretation of a contract in which one of the parties has brought out the issue of the contract not expressing the real intention of the contracting parties.

2d. Because appellant seeks relief from the terms of a contract which do not express the intention of the contracting parties.

Point One.

The Supreme Court of the Philippine Islands erred in stating that the evidence adduced by the appellant at the trial should have been excluded upon the objection of the appellee.

1st. Because even granting, for the purpose of this argument, that the evidence adduced by the appellant should be of a character which would tend to vary or contradict the terms of the contract, this being an equitable case and, under the circumstances shown by the facts alleged in the special defense, such evidence is admissible.

2d. Because this being an equity case, any party, plaintiff, or defendant can offer evidence to show that the instrument relied upon by the other party does not contain

the terms and agreements agreed upon between the parties, and is not the depository of the intention of said parties.

3d. Because under the principles of equity, appellant could adduce evidence so as to give to the instrument the effect and intention which the parties had given at the time the same was executed, and not that which without such evidence the strict interpretation of the language employed in the instrument would convey.

4th. Because when a party, as in the case at bar, claims to convey an undue benefit from the strict application of the language of a contract, equity allows the party who would be prejudiced by such an undue claim to show what was the real intention and meaning of the parties at the time of executing the contract, viewed under the light of the surrounding circumstances.

5th. Because the laws of the Philippine Islands allow evidence of the kind offered and presented by appellant to impugn a contract which does not express the true intent and agreement of the parties.

6th. Because there is no authority in the decisions of the Supreme Court of the Philippine Islands to support the holding of the same court in this case.

Point Two.

Under the issues of fact raised by the appellant's general answer denying under oath each and every fact alleged in the complaint, appellant had a right to show by evidence—

1st. That the sugar mills and machinery were not part of the estate sold—

(a) Because prior to the execution of the bill of sale the sugar mills had been sold to a third party, and

(*b*) That orders were given to remove those sugar mills from the estate before the preliminary agreement took place.

2d. That the railway was not in or on the estate and did not form part of same at the time that the preliminary agreement of sale was made.

3d. That both the mills and the railway were not attached to the estate and were not fixed to the lands or camarins of the Hacienda in a permanent manner at the time of the preliminary agreement or of the final deed of sale.

4th. That there was no demand from the Government to recover the sugar and rice mills and tramway or the value thereof prior to the filing of the complaint.

POINT THREE.

Appellee has failed to prove the issues raised by the general answer of appellant and appellant's denial under oath of the facts alleged in the complaint, there being nothing in the record that can justify the decision of the Supreme Court to the effect that there is sufficient evidence to support the allegations of the complaint or to justify a reversal of the finding of facts made by the Court of First Instance.

POINT FOUR.

There being no relevant or competent evidence in the record to the effect that the value of the sugar mills and tramway was (₱50,000) fifty thousand pesos, appellee has failed to prove its case, and the action should, therefore, be dismissed.

POINT FIVE.

The reversal of the finding of facts made by the Court of

First Instance was unauthorized by the rules of the Supreme Court and against the law.

POINT SIX.

General considerations and discussions of errors third, fourth, eleventh and twelfth.

ARGUMENT.

Preliminary.

This is a case which falls under the jurisdiction of a court of equity.

Before taking up the questions brought out by the assignment of errors, we beg first to submit to the consideration of this honorable Supreme Court that the present case is one that falls plainly and exclusively within the equity jurisdiction of this Court:

1st. Because it has to do with the interpretation of the contract in which one of the parties has brought out the issue of the contract not expressing the real intention of the parties thereto, and

2d. Because appellant seeks relief from the terms of a contract which do not express the intention of the parties who executed the same.

It is a generally established rule, and uniformly supported by numerous decisions, that this Court is not to be divested of its equity jurisdiction in cases proceeding from other jurisdictions where the distinction between law and equity does not exist, and that if the case brought for consideration is one which would fall under the equity jurisdiction, this Court will consider it and decide it under the

principles of equity, and, if otherwise, it will be determined under its jurisdiction as a court of law.

What is to determine the jurisdiction of law or equity of this Court? The answer we find in the case of *May vs. Le Claire,* 11 Wall., 217, wherein it is stated that equity sometimes takes jurisdiction on account of the parties and sometimes on account of the proper relief to be administered. Under the facts as disclosed by the pleadings in this case the equitable nature of the issues raised by the special defense of the appellant becomes unquestionable, and makes the case fall exclusively within the jurisdiction of a court of equity. In said special defense the appellant seeks relief from the terms of a contract which may give rise to an interpretation which the contracting parties never intended to give, as including in said contract things which were never contracted for, and which were, in fact, purposely excluded from all negotiations which preceded and accompanied the execution of the same. Under the circumstances the authorities all agree that the courts of equity are the proper ones to take cognizance of the case and give the proper relief sought for by the aggrieved party. It is true that in the Philippine Islands there is no such distinction between courts of law and courts of equity, but it is also true that the principles of the civil law govern in the Philippine Islands; and it is also a matter of history that the remedies granted by equity were founded on the principles of the civil law. Therefore, although such distinction is not especially established, yet the same courts are empowered to administer remedies under the principles of both kinds of jurisprudence. The laws in force in the Philippine Islands give the courts powers to administer remedies pertaining to both systems of jurisprudence; and if such is the case, where a case is brought to the decision of this honorable Court it is considered and decided by the principles of law, or under the rules of equity, as the case shall fall within the jurisdiction of the one or the other system. The following authorities give us full support in this contention:

"The reformation of written contracts or instruments for fraud, mistake, or accident is an ordinary head of equity jurisdiction. Such power cannot be exercised by common-law courts. Relief can be granted only in a court of equity" (*Ivinson vs. Hutton*, 98 U. S., 79, 82).

"Generally speaking, a court of law is competent to afford an adequate remedy to either party for a breach of contract by the other, from whatever cause it may have proceeded, and whenever this is the case a resort to a court of equity is improper; but, if the contract ought not in conscience to bind one of the parties, as if he had acted under a mistake, or was imposed upon by the other party, or the like, a court of equity will interpose and afford relief which a court of common law cannot, by setting aside the contract, and, having thus obtained jurisdiction over the principal question, that court will proceed to make such other decree as the justice and equity of the case may require" (*Hepburn vs. Dunlop*, 1 Wheat., 179).

As a natural sequel to the last-quoted authority, we beg to cite also the following:

"The application of the rule that the absence of a complete and adequate remedy at law is the test of equity jurisdiction, must depend on the character of the case as disclosed by the pleadings" (*Arrowsmith vs. Gleason*, 129 U. S., 86; *Rich vs. Braxton*, 158 U. S., 375; *United States vs. Union Pacific Railway Company*, 160 U. S., 1; *Litchfield vs. Ballon*, 114 U. S., 190; *Watson vs. Sutherland*, 5 Wall., 74; and *Payne vs. Hook*, 7 Wall., 425).

"If through mistake and inadvertence a wrong description is placed in a deed and property not intended to be conveyed is conveyed, there cannot be any doubt of the jurisdiction of a court of equity to interfere and restore to the party the title which he never intended to convey. So of any other inadvertence and mistake vital in its nature by which title is conveyed when it ought not to have been conveyed" (*Williams vs. U. S.*, 138 U. S., 514, 517).

> "Equity will retain its jurisdiction unless remedy or defense is as sufficient, as complete, and as final in law as it would be in equity" (*Cable vs. United States Life Insurance Company*, 191 U. S., 288).

That the courts of the Philippine Islands are vested with the general powers of both courts of law and courts of equity can be seen by a simple examination of the Code of Civil Procedure, and the provisions of the Civil Code in force in said Islands. In the Code of Civil Procedure we can see that remedies which are exclusively within the jurisdiction of courts of equity are given to those courts. So sections 162 to 196 provide for the exclusive equitable remedies of injunctions, receiverships, and partition of real estate; sections 254 to 261, for the foreclosure of mortgages; section 284, subsection 30, for specific performance of contracts, and finally, section 285, for the obtention of relief from contracts when said contracts have been made by mistake, and contain an imperfection or fail to express the true intent and agreement of the parties, giving the parties thereto the right to explain any intrinsic ambiguity, or establish its illegality or fraud.

If by the authorities above cited this last remedy pertains exclusively to the equity jurisdiction, it is clear that for the determination of the rights of the parties and for the adjudication of the issues raised by the defendant in this case, the rules and principles of equity must prevail and not the strict principles of the common law.

DISCUSSION OF THE ERRORS AND POINTS RAISED BY APPELLANT.

Having established the equitable nature of the case and after submitting to the consideration of this honorable Court that the issues of the same must be decided according to the principles of equity, we shall now proceed to examine and argue the errors which this appellant has assigned to the decision of the Supreme Court of the Philippine Islands.

First and Second Errors.

We shall not stop to discuss separately the first error assigned to the decision of the Supreme Court of the Philippine Islands because we believe that all discussion in regard to it is necessarily embodied in the discussion of the second error, which is as follows:

Point One.

THE SUPREME COURT OF THE PHILIPPINE ISLANDS ERRED IN STATING THAT THE EVIDENCE ADDUCED BY APPELLANT AT THE TRIAL SHOULD HAVE BEEN EXCLUDED UPON THE OBJECTION OF THE APPELLEE.

The reason which the Supreme Court of the Philippine Islands gives for such ruling and as given by the learned judge who wrote the majority opinion of said court, is that under the circumstances of the case parol evidence cannot be admissible to contradict or vary the plain meaning and effect of a contract by showing that certain improvements were not included in a certain bill of sale of real estate. The questions, therefore, for us to determine in this discussion are the following:

Questions.

1st. Granting for the purpose of this argument that the evidence adduced by the appellant was of a kind tending to vary or contradict the terms of the contract, could that evidence be adduced under the circumstances shown by the facts alleged in the special defense?

2d. Can a party, plaintiff or defendant in an action based upon a written instrument, offer evidence to show that the instrument relied upon does not contain the terms agreed upon between the parties and is not made the depository of the intention of the parties executing the same?

3d. Can the appellant adduce evidence so as to give to the instrument the effect and intention which the parties had given it at the time the same was executed, and not that which, without such evidence, a strict interpretation of the language employed in the instrument would convey?

4th. When, as in the case at bar, one of the parties claims to obtain an undue benefit, an advantage, arising from an interpretation which might be strictly given to the language of the contract, is the party who would be prejudiced by such an undue claim and against whom recovery is pretended, to be precluded from impugning the contract and from showing what was the real intention and meaning of the parties at the time of executing the contract and in view of the circumstances surrounding the execution thereof?

5th. Aside from the fact that this case is of an equitable nature, and that under the rules and principles of equity oral evidence can be adduced to show what was the real intention of the parties, do the laws in force in the Philippine Islands allow evidence of the kind offered and introduced by the appellant for the purpose of showing what was the inten-

tion of the parties and for impugning the contract on which the other party to the suit relies?

6th. Do the authorities of the Philippine Islands support the ruling in the negative given by the Supreme Court of those Islands to the preceding question?

7th. Granting for the purposes of argument, (*a*) that this case is not of an equitable nature so as to apply to it the principles of equity in granting relief against the interpretation of a contract which does not express the real intention of the parties; (*b*) that the appellant could not have offered such evidence under the allegations of the special defense; and (*c*), that the demurrer to the latter should have been sustained, can the appellant still be allowed to offer and adduce such evidence under the general issue raised by its general and specific denial under oath of each and every one of the allegations of the complaint?

Before proceeding to answer the above questions, we desire to call the attention of this honorable Court to the fact that, although the provisions of the Civil Code in regard to the interpretation of contracts as contained in articles 1282 and 1283 thereof, have emanated from the principles of the civil law, yet the Code of Civil Procedure now in force in said Islands belongs to that set of laws published under the American administration and therefore, for the interpretation and application of the principles therein contained resort must be had, in default of a local interpretation, to the rules of construction and interpretation of those laws, as found in the body of the law and equity decisions of the courts of the United States, and especially of the honorable Supreme Court, to which appeal lies from decisions of the Supreme Court of the Philippine Islands, under Section 10 of the Act of Congress of July 1, 1902, known as the Philippine Government Act, 32 Stats., 691, 695. That this is so, the Supreme Court of the

Philippine Islands made clear in the case of *Alzua and Arnalot vs. Johnson*, 21 Phil. Rep., 331.

> "While it is true that the body of the common law as known to Anglo-American jurisprudence is not in force in these Islands, nor are the doctrines derived therefrom binding on our courts, save only in so far as they are founded on sound principles and applicable to local conditions, and are not in conflict with existing law; nevertheless, many rules, principles and doctrines of the common law have to all intents and purposes been imported into this jurisdiction and as a result of the enactment of new laws and the organization and establishment of new institutions by the Congress of the United States, or under its authority; for it will be found that many of these laws can only be construed and applied with the aid of the common law from which they were derived, and in breathing the breath of life into many of the institutions introduced in these Islands under American sovereignty, recourse must be had to the rules, principles, and doctrines of common law, under whose protecting ægis the prototypes of these institutions had their birth." (See also *Kepner vs. U. S.*, 195 U. S., 100; *Serra vs. Mortega*, 204 U. S., 470, 11 Phil. Rep., 762).

If for the determination of the questions involved in this case resort should be had only to our Civil Code we should stop here and discuss the issues and questions involved herein under the principles of the civil law. But inasmuch as the decision of this case by the Supreme Court of the Philippine Islands has not been made upon the rules of interpretation under the Civil Code, but upon one of the articles of the Code of Civil Procedure, which, as we have said hereinbefore, emanated from the legislative authority under the American sovereignty, we are bound to look for the spirit forming the rules set down by said code, and the only fountain where we can get the interpretation and the real and true meaning and spirit of those

provisions should be found in the equity and law jurisprudence of this country.

As we shall see later, in discussing the sixth question submitted by us, the jurisprudence of the Philippine Islands is silent as to the interpretation to be given to article 285, of the Code of Civil Procedure, under the facts and circumstances peculiar to this case.

Section 285 of the Code of Civil Procedure reads as follows:

> "*Written agreement presumed to contain all the terms of the agreement.* When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be, between the parties and their representatives or successors in interest, no evidence of the terms of agreement other than the contents of the writing, *except in the following cases:*
>
> (1) Where a mistake or imperfection of the writing, *or its failure to express the true intent and agreement of the parties,* is put in issued by the pleadings:
>
> (2) Where the validity of the agreement is the fact in dispute.
>
> But this section does not exclude other evidence of the circumstances under which the agreement was made, or to which it relates, or to explain an intrinsic ambiguity, or to establish its illegality or fraud. The term 'agreement' includes deeds or instruments conveying real estate, and wills as well as contracts between the parties."

This section has been taken mainly and almost verbatim from Section 1856 of the California Code with the exception that in Subsection 1 the words "or its failure to express the true intent and agreement of the parties" have been added to the provisions of said article. It is therefore clear that the legislators, in adding those words to the Article of the California Code, intended to give a further reason

for relief, only known to courts of equity, in case a contract should not express the true intent and agreement of the parties. Therefore, for the interpretation of this article, we are not bound exclusively by the interpretation which the courts of California might have given or might give to Section 1856 of its code in its courts of law, but we must find the spirit prompting that provision in our laws in the sound and beneficent principles of equity.

In the answer therefore to the questions presented by us we shall have to resort mainly to equity jurisprudence, although by no means do we desire to convey any idea that we could not find in the rulings of the courts of law, as distinguished from courts of equity, authorities which would support our contention.

First Question.

Granting for the purpose of this argument that the evidence adduced by the appellant was of a kind tending to vary or contradict the terms of the contract, could that evidence be adduced under the circumstances shown by the facts alleged in the special defense?

From the statement of facts given by us in this brief, read together with the allegations contained in the special defense alleged by this appellant in its answer, we find that at the time when the appellant and the appellee were discussing the draft of the preliminary agreement of sale of December 22, 1903, the representative and agent of this appellant made objection to the inclusion in the preliminary agreement of sale of the words "sugar and rice mills and machinery," and that upon his objection said words were crossed out and excluded from said contract. We see, furthermore, that when the final draft of the final deed of sale of the Calamba estate was submitted to the agent of the appellant on the 24th day of September, 1904, the words "sugar mills" again were included in the body of the sale

and again the representative of the appellant objected to the inclusion of said words, and upon his objection those words were stricken off and suppressed from the contract, leaving all the rest of the clause as it was then.

Based on those facts, appellant, in its special defense, impugned as erroneous and imperfect the contract which could give rise to an interpretation contrary to the real intent and agreement of the parties, and under such allegation it could offer evidence tending to show what was the real and true interpretation which should be given to the contract.

Judge Clifford, in the case of *Walden vs. Skinner*, 101 U. S., 577, tells us:

> "Proof of fraud or mistake may be admitted in equity to show that the terms of the instrument employed in the preparation of the same were varied or made different by addition or subtraction from what they were intended and believed to be when the same was executed. Evidence of fraud or mistake is seldom found in the instrument itself, from which it follows that *unless parol evidence may be admitted for that purpose, the aggrieved party would have as little hope of redress in a court of equity as in a court of law.* Even at law, all that pertains to the execution of a written instrument or to the proof that the instrument was adopted or ratified by the parties as their act or contract, is necessarily left to extrinsic evidence, and witnesses may be consequently called for the purpose of impeaching the execution of a deed or the writing under seal, and showing that its sale or delivery was procured by fraudulently substituting one document for another; or by any other species of fraud by which the complaining party was misled and induced to put his name to that which was substantially different from the actual agreement. (*Thorogood's Case*, 4 Coke, 4.)
>
> "When the deed or other instrument in writing is duly executed and delivered, the courts of law hold that it contains the agreement of the parties, and that the writing furnishes better evidence of the sense of the parties than any that can be supplied by parol; 'but courts of equity,' says Chancellor Kent, 'have

a broader jurisdiction, and will open a written contract to let in an equity arising from facts perfectly distinct from the sense and construction of the instrument itself.' Pursuant to that rule, he held it to be established that relief could be had against any deed or contract in writing founded on mistake or fraud, and that mistakes may be shown by parol proof and the relief granted to the injured party, whether he sets up the mistake affirmatively by bill or as a defense." (*Gillespie vs. Moon*, 2 Johns. (N. Y.), Ch. 585, 596.)

In 1 Story, Eq. Jur., section 156, we read the following:

"Courts of equity afford relief in case of mistake of facts, and allow parol evidence to vary and reform written contracts and written instruments when the defect or error arises from accident or misconception, as properly forming an exception to the general rule which excludes parol testimony offered to vary or contradict written instruments. Where the mistake is admitted by the other party, relief, as all agree, will be granted, and if it be fully proved by other evidence, the reason for granting relief seems to be equally satisfactory."

The courts of Louisiana, where a system of laws exists very similar, if not identical, to that existing in the Philippine Islands, have held that "it is a universal rule of jurisprudence that parol testimony is admissible to defeat written contracts when fraud is alleged, and *error is often akin to fraud.*" This rule was applied in *Palangue vs. Guesnon*, 15 La., 311, where the error complained of was a mistake in the description of a lot and the previous decisions of the same court and other authorities are cited. (*Ibid.*, 313.) The same doctrine was approved in *Williams vs. Vance*, 2 Ann., 909.

"The distinction drawn in such cases" said the court in *Levy vs. Ward* (33 Ann., 1033), "is that the attempt is not to prove by parol a sale of immovable property nor to contradict a valid existing written instrument, but to show

that the instrument does not express the meaning and intention of the contracting parties." In this case, three separate tracts of land were described in the bill of sale. The vendor claimed that he intended to sell and the vendee to buy only the first two tracts described, and that the third tract was included in the written sale through the error of the draftsman of the deed. It was held that parol evidence was admissible to show this fact. This case has a great analogy to the case at bar. In the latter, the appellant and appellee struck off the words "sugar and rice mills and machinery" from a paragraph where besides these words were also found the words "and other improvements thereon." It was the intent and meaning of the parties then that the words "sugar mills" were to be distinguished and considered separate from the general descriptive words "and other improvements," and in striking those words off they did not consider the sugar and rice mills and machinery as included in the sale. It is not only equitable, but just, to permit evidence showing the intention and meaning of the parties in the use of the word "improvements," since otherwise, by applying a strict interpretation of the rule of law that no oral evidence shall be allowed to contradict or vary the terms of a written agreement, would be to permit the use of the Statute of Frauds to commit one, a thing which no court of equity would allow (*Smithsonian Institution vs. Meech*, 169 U. S., 398, 408).

We have taken and considered this question as granting, for the purposes of argument, that if the evidence offered by the appellant tended to vary or even contradict the written instrument, such evidence could be adduced under the circumstances and facts alleged in appellant's special defense. We might continue to cite one authority after another, but they are quite too numerous for citation and we shall only limit ourselves in closing this discussion to quote the contention of Taylor (2 *Taylor Evidence* (6th edition), 1041), that "courts of equity will also admit parol evidence to contradict or vary a writing whereby some mistake of fact

speaks a different language from what the parties intended and where consequently it would be unconscionable or unjust to enforce it against either party."

But the appellant in this case does not by its evidence try to contradict the terms of a written instrument. It limits itself to introduce evidence showing what was the real intention of the parties, and on that ground,

Second Question.

Can a party, plaintiff or defendant in an action based upon a written instrument, offer evidence to that effect?

We might answer with the words of the court in the case of *Palangue vs. Guesnon* (supra):

> "This is not an attempt to prove by parol a sale of immovable property, nor to contradict a valid existing instrument, but to show that by accident or negligence the instrument in question has not been made the actual depository of the intention and meaning of the contracting parties. How can a mistake of this kind be proved but by parol? * * * Cases of error are sometimes kindred to those of fraud, and should be governed by the same rules. Is it not an actual fraud to claim an undue benefit and advantage from a mere mistake contrary to the real intention of the parties to the contract? In cases of this kind, to be sure, there should be the strictest proof possible, but to reject testimony altogether would in many instances be to sanction the grossest frauds." (Citing *Berard's Heirs vs. Berard*, 2 La., 3; *Broussard vs. Sundrique*, 4 La., 350; 4 *Starkey on Evidence*. 10, 18; *Baker vs. Paine*, 1 Vessev's Reps., 456; *Haut vs. Rousmanier*, 8 Wheat., 211.)

Our case is a still much stronger one than the case that elicited those words from the Louisiana court. There has been no error, there has been no mistake, and if there has been any, it has been induced by the appellee to afterwards take

advantage of it and work an injustice on it. The mere reading of the statement of facts in the present case would be the best argument in support of our contention that the evidence showing what was the real and true intent of the parties in executing the agreement was admissible not only in equity but also in law. Appellee cannot be permitted to strike out from a contract certain words and after striking them out insist that the property which those words described were included in general words which existed at the time that those special descriptive words were stricken off. It cannot be allowed to invoke nor to demand a strict interpretation of the language employed in the instrument as including something which by its own acts it agreed to exclude. And therefore, these considerations lead us to answer in the affirmative the

Third Question,

to the effect that the appellant *can adduce evidence so as to give to the instrument the effect and intention which the parties had given it at the time the same was executed and not that which a strict interpretation of the language employed in the instrument would convey.*

Courts of justice (no more those of equity) are bound in the interpretation of contracts to seek the common intent of the parties rather than to adhere to the literal sense of the terms (*Marcotte vs. Coco,* 12 Rob., 167, 170). In *Nash vs. Towne,* 5 Wall., 698, it was stated that:

> "Courts, in the construction of contracts, will look to the language employed, the subject-matter, and the surrounding circumstances, and are never shut out from the same light which the parties enjoyed when the contract was executed, and in that view they are entitled to place themselves in the same situation as the parties who made the contract, so as to view the circumstances as they viewed them, and so to judge the meaning of the words and of the correct application of the language to the things described."

Fourth Question.

When, as in the case at bar, one of the parties claims to obtain an undue benefit, an advantage, arising from an interpretation which might be strictly given to the language of the contract, is the party who would be prejudiced by such an undue claim and against whom recovery is pretended, to be precluded from impugning the contract and from showing what was the real intention and meaning of the parties at the time of executing the contract and in view of the circumstances surrounding the execution thereof?

In *Gardiner vs. McDonald*, 147 Cal., 330, it was stated that "parol evidence is always admissible to identify the subject-matter of a contract." The judge who rendered the decision in the case of *Walsh vs. Hills*, 38 Cal., 481, 487, said:

> "In construing written instruments the only rule of much value is to place ourselves as nearly as possible in the seats which were occupied by the parties at the time the instrument was executed, then taking it by the four corners, read it."
>
> "In passing upon a question of this kind (whether certain machinery passed with the deed of sale when this deed mentioned expressly that the land or house was sold with all the machinery together with the building plant), evidence of the relation of the parties, situation of the property, and other surrounding circumstances, is admissible to show what was intended to be conveyed and what is and what is not parcel of the subject-matter of the mortgage and intended to pass thereby." *Beaupré vs. Dwyer*, 43 Minn., 485.

Courts, in the construction of contracts, look to the language employed, the subject-matter, and the surrounding circumstances. They are never shut out from the same light which the parties enjoyed when the contract was executed. Hence, it is frequently necessary, in order to construe writ-

ten instruments, to receive evidence of other accompanying acts than those which serve to apply the instrument to the subject-matter or person intended. There is a class of cases which has carried the rule somewhat further than is indicated above. These cases hold that under some circumstances not only the situation of the parties and their relations, but their acts, negotiations, and statements, may be proved as part of the surrounding facts which throw light on the transaction (*Knight vs. New England Worsted Company*, 2 Cush. (Mass.), 271; *Case Manufacturing Company vs. Soxman*, 138 U. S., 431; *Bradley vs. Washington Packet Company*, 13 Pet. (U. S.), 89; *Jones Commentaries on Evidence* (Horwitz edition), vol. 3, p. 233).

In closing out our answer to the fourth question we want to quote a further authority in the case of *A. L. Hammerquist vs. Gustav Swensson*, 44 Ill. App., 627:

> "In the interpretation of contracts it is always allowable to show what interpretation or construction the contracting parties have placed upon the same. The expression in a given contract of a number of things of a class or kind implies the exclusion of all not expressed, and this is so if the law would have implied all if none had been enumerated."

We have left the answer to this fourth question entirely to the authorities quoted, which can answer it better than we could by our own statements.

Fifth Question.

Aside from the fact that this case is of an equitable nature, and that under the rules and principles of equity oral evidence can be adduced to show what was the real intention of the parties, do the laws in force in the Philippine Islands allow evidence of the kind offered and introduced by the appellant for the purpose of showing what was the intention of the parties and for impugning the contract on which the other party to the suit relies?

We believe to have shown heretofore that according to jurisprudence, not only in courts of equity, but also in courts of law, oral evidence of the kind offered by the appellant could be introduced. Purposely we have refrained until now from discussing this point under the laws in force in the Philippine Islands. But we shall do so now.

We have already quoted section 285 of the Code of Civil Procedure; we have already mentioned its origin in section 1856 of the California Code, and have cited hereinbefore cases decided by the California courts in which, interpreting the provisions of that section of its code, these courts held that oral evidence was permissible to show the facts and circumstances surrounding the execution of a contract and to identify the subject-matter of a contract. We have also shown that although section 1856 of the California Code has been inserted verbatim into our Code of Civil Procedure, a new ground for offering evidence of the terms of the agreement has been added in subsection 1 by the words *"or its failure to express the true intent and agreement of the parties,"* which fully applies to the case now under discussion. Besides this section, section 288 of the Code of Civil Procedure provides that:

> "In the construction of an instrument, the intention of the parties is to be pursued; and when a general and a particular provision are inconsistent,

the latter is paramount over the former. So a particular intent will control a general one that is inconsistent with it."

And section 289 provides that—

"For the purpose of the construction of an instrument, the circumstances under which it is made, including the situation of the subject of the instrument and the parties to it, may also be shown, so that the judge may be placed in the position of those whose language he is to interpret."

In the Civil Code in force in the Philippine Islands, sections 1282 and 1283 provide as follows:

Section 1282.—"In order to judge as to the intention of the contracting parties, attention must be principally paid to their acts, contemporaneous and subsequent to the contract."

Section 1283.—"However general the terms of the contract may be, there should not be understood as included therein things and cases different from those with regard to which the persons interested intend to contract."

If the objection to the written instrument is that it fails to express the true intent and agreement of the parties and this is given as a ground for relief against the contract, how can that intent and agreement different from the other appearing in the contract be proved, except by parol evidence? If section 288 of the Code of Civil Procedure is to be given due effect, how can a court know the intention of the parties in order to construe the instrument except by admitting evidence, according to section 289, as to the situation of the subject-matter of the contract and the parties to it? And how can a court interpret the language used by the parties to the contract if by parol evidence it is not placed under the same light as the parties were when they executed the document?

The provisions of articles 1282 and 1283 of the Civil

Code need no comment; their language is so plain that even if there were no provisions in the Code of Civil Procedure in support of the contention of the appellant, these two articles of the Civil Code would be sufficient in themselves to warrant our position that the evidence adduced at the trial of this case and the facts shown by our special defense were admissible under the law.

The Supreme Court of the Philippine Islands, in utter disregard of the last two cited articles of the Civil Code, confines itself to discuss the effect or the meaning of subsection 1 of section 285. It contends that appellant's claim that parol evidence is admissible in the case at bar to show that it was understood between the parties at the time the sale was made that neither the sale of the real estate itself nor the additional words, "all other improvements and accessories," were intended to include the railroad and sugar mills is too broad. Its reason, as found at pages 122 to 124 of the record, is inapplicable and is absolutely at variance with the authorities of both law and equity which we have quoted hereinbefore. With all due respect we beg to suggest that it was perhaps because of the great weight of authorities by us quoted against the interpretation given by the Supreme Court to section 285 of the Code of Civil Procedure that we read the following paragraph in the decision:

> "We do not discuss the general rule relative to the admissibility of parol evidence in connection with written instruments or the valid exceptions to this rule as laid down by the courts of the United States. It is unnecessary here. The statute with reasonable clearness states the rule and gives the exceptions. It is not our province to do more than apply it."

And forgetting the provisions of section 2 of the Code of Civil Procedure which state that the

> "provisions of this code and proceedings under it shall be liberally construed in order to promote its object and assist the parties in obtaining speedy justice,"

as well as the provisions of section 106 of the same code which state that

> "in the construction of a pleading for the purpose of determining its effects, its allegations shall be liberally construed with a view to substantial justice between the parties";

and failing to recognize that if a party alleges in a pleading that the contract fails to express the true agreement and intent of the parties, it is as much as saying that there is a mistake and imperfection in the contract (under which latter circumstance the Supreme Court admits that parol evidence can be introduced); and after citing in support of its ruling a long list of cases decided theretofore in regard to the same section, concludes with the statement that the evidence offered on trial to sustain the special defense should have been excluded under the objection of the plaintiff. But,

Sixth Question.

Do the authorities cited by the decision of the Supreme Court of the Philippine Islands support its ruling in this case? Do those authorities hold that the evidence adduced by the defendant is inadmissible?

We cannot resist the temptation to discuss here one by one the cases cited in the Supreme Court's decision, to show that not one of them is applicable to the present case, and to show further that at least two or three of them precisely uphold and support our contention.

The case of *Sy Yoc Lieng vs. Sy Quia*, 16 Phil. Rep., 137, which has already been before this Supreme Court, only goes to show that when it was proved that matrimonial letters in a Chinese marriage were the best proof of its actually having taken place, in the default of such proofs and in the absence of evidence showing their disappearance, the testimony of witnesses could not be allowed to prove said

marriage. In other words, we find in that decision nothing that will support the sweeping statement that no oral evidence can be adduced to vary or contradict the terms of a written document, under circumstances like those existing in the present case.

The case of *Lozano vs. Tan Suico,* 23 Phil. Rep., 16, showed that the defendant had guaranteed by mortgage to pay an indebtedness of a third party, if the same was not paid at maturity. At the trial the defendant tried to show by parol that he had not guaranteed said indebtedness but had only signed the document as a witness. The Court held that such parol evidence was not admissible to dispute the contents of a written instrument, but inasmuch as there was no proof that the principal debtor had not paid the debt at maturity, the case was dismissed. It is clear, then, that the ruling of the court as to the admissibility of oral evidence was *obiter.*

We next examine the case of *José vs Damián,* 14 Phil. Rep., 104, in which a party was held not to be able to sue for the whole unpaid balance of a debt when the instrument evidencing said debt recited that the same would be paid in installments. The document was not questioned in the least and there was no action resembling even remotely the issues of the present case.

The case of *Guzman vs. Balarag,* 11 Phil. Rep., 503, we believe that instead of favoring the proposition set down in the decision appealed from, it does, on the contrary, support our contention. In that case the Supreme Court established that

> "when a contract for a loan of money without interest is contained in an authentic document, which has not been impugned as false in either civil or criminal proceedings, one of the contracting parties cannot withdraw therefrom, nor is it lawful to attribute to the contract an extension and scope which can neither be deduced from its terms nor inferred from the intention of the parties, inasmuch as no

> matter how general may be the terms of the contract, things and cases differing from those the parties in interest intended must not be understood to be therein included, following the doctrine established by the Supreme Court of Spain in its dcision of July 1, 1896, in accordance with Article 1283 of the civil code."

The document was not impugned, and the Supreme Court did not allow it to have a greater scope than it had—that is, to consider a mere promise of mortgage as a sale, with the right of redemption.

The case of *Muguruza vs. The International Bank*, 10 Phil. Rep., 346, does not support the Supreme Court's own contention in the present case. In that case it was sought "to read into the contract new and additional terms and conditions other than those set out therein," and it was declared that plaintiff was not justified in doing so. But in the next paragraph the decision reads as follows:

> "Granting that the pleading and evidence were sufficient to demonstrate the failure of the letters of March 30 to express the true intent and agreement of the parties, and admitting that the terms and conditions set out in the letter of March 28 should be regarded as constituting a part of the final contract of March 30, nevertheless that letter does not support the allegations of plaintiff as to the true meaning and intent of the contract."

So that we see thereby that, in spite of its first statement, the court considered that the plaintiff in that case could show evidence to prove what was the real intent and agreement of the parties.

In regard to the case *U. S. vs. Macaspac*, 12 Phil. Rep., 26, we must point out that it supports precisely a contrary view from that expressed in the decision appealed from. This is what the court said in the concluding paragraph of the decision in that case:

> "As to the testimony given by Marcelina Dy-Oco, in connection with the document in question, it is evident that it was for the purpose of explaining the circumstances that preceded and led to its execution, and it was perfectly admissible, according to the last paragraph of section 285 of the code of civil procedure, and for the further reason that it was received without the least objection on the part of the defense."

In the case of *Icaza vs. Ortega*, 5 Phil. Rep., 166, the document was not impeached or impugned, and it was the only proof of the agreement presented by either party. The question was not, as the court said, one of law, but of fact, as to whether or not under the clauses of the contract certain repairs done in a leased building had to be paid for by the lessor or by the lessee.

The case of *Sanz vs. Lavin Brothers*, 6 Phil. Rep., 299, has absolutely no bearing or connection with the questions now under discussion. The court only makes the statement that the sum for which a certain house was sold under mortgage was that which appeared in the deed of sale, and not that which the plaintiff acknowledged to have received. We must say in passing that such a statement is made *obiter*.

We do not see how the case of *Testagorda vs. The Commanding General*, 6 Phil. Rep., 573, can support the contention of the Supreme Court in the decision appealed from, when that same tribunal said in that case:

> "It is true that no evidence against the terms of the written contract is admissible except the document itself (section 285, paragraph 1), but it is none the less true that this section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, or to explain an intrinsic ambiguity, or to establish its illegality or fraud. The term 'agreement' includes deeds and instruments conveying real estate and wills, as well as contracts between the parties."

There remains one more case only to discuss of the long ray of citations found in the decision appealed from. at is the case of *Pastor vs. Gaspar*, 2 Phil. Rep., 592, part which decision is inserted in the decision appealed from. this case a certain sum of money was borrowed by the de- ndant from the plaintiff, giving as security some vessels ich belonged to the defendant. One of the terms of the n agreement was that while the amount loaned was not id, the profits yielded by the operation of the vessels would distributed pro rata between the plaintiff and the defend- t; in other words, between the lender and the borrower. me time later the vessels were sold by common agreement the defendant and the agent of the plaintiff. Plaintiff er sued the defendant to have the sale set aside and the ssels restored to their former owners, alleging that the rep- sentations made to this agent and which caused the latter consent were fraudulent, and that he had a right as a part- r in the business of the vessels to have the sale set aside. other words, he claimed to have a right of action under e agreement by pretending that the agreement was not a re contract of pledge, but a contract of partnership. The preme Court held, and rightly so, that the contract spoke itself, and that the pretensions of the plaintiff could not made good by parol evidence tending to contradict the port of the document. So that we can see that this case, ich seems to be the strongest one in the mind of the iter of the majority opinion of the Supreme Court of the ilippine Islands in support of the latter's contention in r case, has absolutely no analogy to the present one, in ich the only question discussed is whether or not there s any agreement between the parties to include the sugar d rice mills and machinery in the general word "im- vements" therein.

Having seen that we can find nothing in the decisions of e Supreme Court of the Philippine Islands to maintain e theory sustained in the present case, but on the con- ry having found some which uphold our own conten-

tion (see cases of *Testagorda vs. the Commanding General*, and *United States vs. Macaspac, supra*), we again insist that the true interpretation of the principles set forth in Section 285 of the code of civil procedure must be examined under the light of the decisions of the courts of this country.

It will be argued, perhaps, by the opponents that if the sugar and rice mills and machinery as well as the tramway were not to be included in the sale, why in the first description of the estate of Calamba given in the deed of sale said sugar and rice mills and machinery are there included? To this we will answer, stating that that same document of sale, after giving the old description of the estate in which the description of the sugar mills is given, followed by the words "although it is believed that they have been destroyed, at least in part, by the revolutionists," a new description is given "according to the survey made by the engineers of the Insular Government," and in this new description nothing is said of those "sugar and rice mills and machinery." Therefore, for a true interpretation of the contract the first description must be taken as a mere narrative and not as an integral part of the contract, because for the effects of the sale the second description is the only one which holds, so much so, that in the preliminary agreement of sale, which is made part of the final deed of sale (see Rec. p. 11) it is stated that if a true survey to be made by the engineers of the Government "shall show the area of the Hacienda to be less than that stated by Villegas (the surveyor who made the survey of the estate at the instance of the Government of the Philippine Islands), in the list hereinbefore set forth, then the price herein agreed to be paid shall be abated by an amount to be ascertained by multiplying the number of hectares short, etc." If both descriptions of the estate as given in the deed of sale were to hold, then we would find an intrinsic ambiguity in the contract iteelf, inasmuch as there being some articles described in the first description,

the same do not appear in the second, and for this purpose and to explain such intrinsic ambiguity, oral evidence can unquestionably be adduced by either parties to the contract, if the question comes up as to whether or not property listed in the first description is included in the second one.

We must however say in passing that the first description of the Calamba estate as contained in the old title deeds was incorporated in the deed of sale merely as a narrative, to comply formally with the requirements of the Mortgage Law in force at that time in the Philippine Islands, and in order to comply with the provisions of Article 74 of the General Regulations for the Execution of the Mortgage Law for Cuba, Puerto Rico and the Philippines, in which it is said:

> "After description of an estate has been made in its record of ownership, it shall not be repeated in any other records or entries made in the register relative thereto provided the name, location, superficial area, bounds and other important details are stated in the same manner in the instrument presented for this purpose, but the number of the estate of record and of the folio and liber of the register in which said description may be found shall be cited, adding any other details to complete it, and which appear from the instrument presented. When all the details are not indicated in the same manner a statement shall be made of only the ones at varinnce and a simple reference made to the other ones."

Article 75 of the same Regulations Provides:

> "Records of any kind shall be made in the following order:
> 1st. Description of estate, the subject of record, or a reference thereto if proper according to the preceding article. 2nd. etc."

Article 72 provides:

> "That stations, warehouses, dams, bridges, aqueducts and other works constituting an integral part

of said road or canal, necessary for its existence and operation, do not require a distinct and special record, but shall be included in the general record or in the special ones of the public work itself, stating in each register the works located in the part of the land comprised within their jurisdiction, but other buildings and construction works, orchards, gardens, forests, plantings, and any other rural or city property and property rights arising out of railways, canals and other public works which are the private property of grantee companies, must be recorded specially and separately in the proper register with the details and conditions required by law and by these Regulations."

The General Instructions on the Manner of Drawing up Public Documents Subject to Registration in the Provinces Beyond the Seas, made by Royal Order on August 13, 1893, contain, in article 5, the following provision:

"To describe the rural property (the notaries) shall determine its situation and boundaries with the greatest precision and prolixity. For this purpose they shall state the name by which the property should be known, and if it was known before by another name, both names shall be mentioned. They shall state the municipal jurisdiction and the place where said property is located. They shall also state the boundaries by cardinal points, preferring those boundaries which are naturally or artificially demarcated to the mere designation of the names of the owners of adjoining property. They shall indicate the roads which lead to the estate described, whenever this circumstance may contribute to distinguish it from others, and they shall mention finally all the other marks which may prevent its being confused with others."

We have quoted these articles to show that inasmuch as in accordance with the Mortgage Law and Regulations, as well as with the General Instructions on the Manner of Drawing Up Public Documents, the old description of the

estate had to be set forth in any document referring to the estate, so as to identify it and satisfy the Registrar of the Property that the property sold, conveyed, or mortgaged was the identical property registered in the registry; and in case of a new description or new circumstance of the estate, both descriptions, the old and new, had to be inserted in the document, the first to identify the old property and the second to describe the property thereafter. For this and no other reason was the old description of the estate mentioning the existence of the sugar mills and tramway included in the bill of sale. Its purposes are merely narrative, and are not to be considered as a binding description of the estate sold, since the agreement of sale and the price agreed upon referred exclusively, as we have seen by the final agreement of sale, to the new description made by the engineers and surveyors of the Philippine Government. We see in the bill of sale that, after describing the estate of Calamba by metes and bounds, the following statement is made:

> "I also record that in this conveyance to the government of the Philippine Islands are included all the rights and actions which the said corporation by me represented has now or may legally have in and to all buildings and irrigation works, together with all water rights, town lots, and other improvements and hereditaments existing in and on the Hacienda by these presents sold, bargained, and conveyed."

We see in that paragraph that there are special words designating what is to be made part of the sale. Appellee cannot deny that buildings and irrigations works are improvements on the estate, yet they are especially mentioned in the bill of sale, when there was no need to mention them if the general rule of law is to be applied that whenever an estate is sold all improvements and accessories affixed to the estate, and forming part thereof, are included in the sale. But we have, on the other hand, another doctrine which declares that:

> "the expression in a given contract of a number of things of a class or kind implies the exclusion of all not expressed, and this is so if the law would have implied all if none had been enumerated." (*Hammerquist vs. Swensson*, 44 Ill. App., 627.)

In *Harrell vs. Durannee*, 9 Fla., 490, 503, the court said:

> "Parol evidence is sometimes admissible where the language of the instrument is applicable to several persons, to several species of goods, etc., or when the terms be vague and general. In all cases, and the like parol evidence is admissible of any extrinsic circumstances tending to show what person or persons or what things were intended by the party or to ascertain his meaning in other respects."

In this case certain cattle were described by their marks, but the deed of sale contained the expression "sell him my entire stock and claim." Appellant claimed that under this general expression all the cattle of the vendor passed with it. The court overruled this contention under the maxim "*expressio unius est exclusio alterius.*"

We believe that the Court of First Instance was correct, and so we submit, in making the following finding as to this question, referring to the clause now under discussion:

> "This clause seems to indicate that the mills in question were not included in the sale, inasmuch as on mentioning all the real property which was to be included no mention has been made at all of the mills" (Rec., p. 115).

Seeing what we have said so far, we respectfully submit that whatever be the light under which we may examine or view the question now under discussion, the conclusion to be drawn is that parol evidence of the nature offered and adduced by appellant was in point of law and equity admissible.

Seventh Question.

Granting for the purposes of argument:

1st. That this case is not of an equitable nature, so as to apply to it the principles of equity in granting relief against an interpretation of the contract which is contrary to the real intention of the parties, and

2d. That the appellant could not have offered either in law or in equity any such evidence under the allegations of the special defense, and that the demurrer to the latter should have been sustained.

Is that evidence still admissible under the general issue raised by the appellant and the special denial under oath of each and every one of the allegations of the complaint?

The answer must be in the affirmative. The discussion of this question leads us to

Point Two.

UNDER THE ISSUES OF FACT RAISED BY APPELLANT'S GENERAL ANSWER DENYING UNDER OATH EACH AND EVERY FACT ALLEGED IN THE COMPLAINT, APPELLANT HAD A RIGHT TO OFFER AND INTRODUCE THE EVIDENCE APPEARING IN THE RECORD.

If the appellant had confined itself to the first answer filed in this case, as appearing at page 17 of the record, or to the general denial appearing in its last amended answer (page 20 of the Record), then the issues would have been as follows:

1st. If the sugar mills and machinery as well as the tramway were or were not part of the estate sold on October 19,

1905, and whether or not the same were removed by the appellant, and if so, whether the appellant had or had not a right to remove them.

2d. Whether at the time of the execution of the sale any tramway existed on the Hacienda.

3d. Whether the railway and mills were in and on the Hacienda and fixed in a permanent manner to the lands and camarins of the Hacienda of Calamba.

4th. The value of said mills.

5th. If there was any demand by the appellee from the appellant for the reimbursement of the value of the mills, railway and other fixed materials referred to in the complaint.

The issues raised by the answer of the appellant were all questions of fact to be determined, not by the recital of any instrument in writing, but merely by the presentation of evidence tending to prove or disprove the allegations of the complaint.

Under the first issue raised the appellant had unquestionable right to offer evidence, as it did

(*a*) That prior to the execution of the preliminary deed of sale of December 22, 1903, the railroad and sugar mills were not part of the estate of Calamba on account of having been sold in the month of October, 1903, to Don Enrique Rueda (Rec., p. 96; see testimony of Antonio Campos Rueda, pp. 82, 85, and testimony of Francisco Gutierrez Repide, Rec. pp. 70-79).

(*b*) That orders were given to remove those sugar mills and the railway from the estate before the preliminary agreement of sale took place (Rec., p. 96).

We see that as a consequence of the sale to Enrique Rueda and as a consequence of the order of removal, the contract of sale could not refer to things which were not still part of the estate.

Under the second issue appellant was unquestionably at liberty to show by evidence of any kind that the tramway was not in or on the estate and did not form part of same at the time that the preliminary agreement of sale was made, for the same reasons as those given in the preceding issue.

Under the third issue appellant was at liberty to show that both the mills and the railway were not attached to the estate and were not fixed to the lands or camarins of the Hacienda in a permanent manner at the time that the preliminary deed of sale, or at the time that the final deed of sale, was made.

Under the fourth issue it was the duty of the Government to prove the facts questioned in the first three issues as well as the value of the mills and railway with their accessories and appurtenances claimed, and

Under the fifth issue the Government was under the obligation to prove that there was a request or demand for a reimbursement of the value of the mills and railway referred to in its complaint.

It is not in any manner a question of law or of disputing the contents of a written instrument. The case resolves itself into a mere question of facts to be proved by any of the ordinary means of proof known to law, and viewed in this light, all the evidence of defendant and appellant was rightly offered and could not be refused, and therefore the

Tenth Error.

That *"the Supreme Court of the Philippine Islands erred in not considering the evidence adduced by the appellant as evidence tending to establish the circumstances attending the execution of the contract of sale of the Calamba estate, which reference to the contract itself and which makes clear an intrinsic ambiguity,"*

is fully supported by the foregoing considerations.

We might close our brief at this juncture because we believe that with the solution of the main question propounded by the decision appealed from and having shown that the court erred in not ruling out the evidence of defendant and appellant, this evidence not having been contested or disproved by superior evidence by the appellee, the preponderance is in our favor and the findings of the Court of First Instance should not have been disturbed by those of the Supreme Court of the Philippine Islands.

But inasmuch as that court undertook, so to say, to consider the evidence presented by the appellee in support of the allegations of the complaint with entire exclusion of the evidence of defendant and appellant, and to adjudicate the case on its merits, reversing the decision of the lower court, it is our duty to show that the Supreme Court of the Philippine Islands erred

(a) Sixth Error.

In finding that at the time of the execution of the contract of promise of sale on December 22, 1903, there existed on the Calamba estate, and the defendant owned within the same, five sugar mills, called Mapagon, Calamias, Mayapa, Siranglupa, and Punta, with the machinery apparatus, implements and accessories thereof, as well as a tramway composed of rails, ties and other accessories.

(b) Seventh Error.

In finding that at the time of the execution of the deed of sale of the Calamba estate on October 19, 1905, the defendant company possessed within the said estate the sugar mills called Mapagon, Calamias, Mayapa, Siranglupa, and Punta with the machinery, appliances, implements and accesories thereof, as well as a tramway composed of rails, ties and other accessories.

(c) Eighth Error.

In finding that in the sale of the Calamba estate there was included in it the mill Real, as if this mill had been located within said estate.

Because

Point Three.

Appellee has failed to prove the issues raised by the general answer of appellant and appellant's denial under oath of the facts alleged in the complaint, there being nothing in the record that can justify the decision of the supreme court to the effect that there is sufficient evidence to support the allegations of the complaint or to justify a reversal of the finding of facts made by the Court of First Instance.

The defendant having put in issue each and every allegation of the complaint, and more specifically paragraphs 7, 8, 9, 10 and 11 thereof, the appellee was bound to offer in evidence proof of the facts alleged by it in the complaint. This makes it necessary to examine the evidence which the Government presented in this case.

First we have Exhibit A (Appellee's evidence) which is a report made by the witness Charles N. Waet, on March 24,

1906, after the sale of the Calamba estate took place. This report is clearly inadmissible under all sound rules of evidence:

1st. Because it was made at the instance of only one party to the suit without the knowledge or presence of the other, and

2d. Because all the facts contained therein are merely hearsay, and therefore not proof.

However, we find in that report the following paragraph:

> "Both Mr. Marco and Hernandez have told me many times that the mills in question were not included in the sale to the government of the estate. That they were still the property of the company, but that they were worth absolutely nothing in a material sense" (Rec., p. 26).

We again quote from said report (Rec., p. 29):

> "The sugar mill at Real, which in the deed is stated to be a steam mill, is not a steam but a water mill, almost intact, not having been dismantled, as formerly stated. According to Hernandez, it was left intact because the land on which it is located belongs to the company and not to the Government, and that the mill need not be disturbed."

At page 38 of the record we find another statement made in the report of Waet, Exhibit A of the Government, at the trial of the case:

> "The company's camarin in which this machinery is now stored was occupied by Messrs. Finley and Goehr, merchants, till the end of the year 1903, while the building adjoining it, and which has been blown down, was occupied by the cavalry as a stable till about the same year, or probably even longer, and up to this time there was no machinery of any kind stored in either. The only machinery stored

> in town at that time was *the steam mill Punta, which was dismantled and stored in 1897*, by Senor Ibarra, storing part in his own camarin and part in the Hacienda building."

This gentleman, Mr. Waet, author of the report from which we have quoted some paragraphs, testified as a witness in the case and ratified all the statements made in said report.

The next exhibit presented by the Government to prove the allegations of the complaint was Exhibit B, questioned by the appellant, wherein we find the words:

> "though it is believed that they (referring to the sugar mills and tramway) had been destroyed, in part at least, by the revolutionists."

That being the case, coupled with the further fact that the appellant denied in the answer the existence of the sugar mills and tramway on the estate at the date of the execution of the final deed of sale, it became incumbent upon the Government to prove the existence of that property in and on the estate at the time of the sale, because the very wording of the document left in doubt whether or not such property was on the Hacienda, and what was the condition of said sugar mills and railway, so as to prove the allegation made in paragraph 9 that they were fixed in a permanent manner to the lands of the Hacienda and were devoted to their purposes up to the date when the removal took place. For this purpose, for the purpose of proving these facts, the Government presented three witnesses—Inocencio Hernandez, Charles N. Waet, and Maximiliano Villanueva. Mr. Hernandez tells us (Rec., p. 52), in answer to a question put by the attorney for the Government, that the rails involved in this litigation were removed from the Hacienda in May, 1903, and the first machinery about the end of the same year, and that they kept on removing all the machines from that date on, until some months later they were all taken

away; that he received the order to remove those machines and tram rails in May, 1903 (Rec.; p. 53); that the Ibarra machines (Punta) were also removed in that month of May, and were in that condition (Rec., p. 54) because part of the camarin where they were had fallen on top of them.

"Q. Was it a machine or were they loose pieces of machinery when you went to get it?

"A. There was a round boiler and several loose pieces in the camarin.

"Q. Were they all united, forming a machine that might be used at that moment when you went to take it, or not?

"A. No; they were all apart.

"Q. Was the machine complete with all its pieces, or not?

"A. No, sir.

"Q. Were there any of the apparatus or pieces of that machine missing?

"A. Yes, they were missing.

"Q. Was the same in condition to be put to work or running at the time it was removed by you?

"A. No, sir.

"Q. Those pieces missing from the machine, were they mere details or minor pieces, or were they important ones?

"A. They were important pieces for the work of the machines of Ibarra. All the bronze parts were missing.

"Q. Have you any special knowledge of machinery and in regard to sugar mills?

"A. A little.

"Q. Do you know what are the important pieces for the working of a sugar mill?

"A. Yes, sir.

"Q. Did any of the machines which you took have any cylinders, cog-wheels, pinions, axles, etc.?

"A. In all of them there was nothing but axles, none of them had the fly-wheel in good order.

"Q. Did it have any cog wheel?

"A. Yes, broken and the axles too.

"Q. Were there cylinders?

"A. They were all broken by hammer.

"Q. Were there fly-wheels?

"A. Yes, broken by hammer as well as the pinions."

(Rec., p. 55:)

"Q. What was it that you took from Mayapa?

"A. A boiler, the axles, cog-wheel.

"Q. Was that machinery (the Mayapa mill) complete and put together in its place?

"A. The boiler was fallen to one side; the main cog-wheel was there also fallen and thrown to one side and there was nothing left but the axles."

He goes on to say that there were no shaft bearings, that all the rollers were broken, that everything was mixed up and thrown about, that none of the rollers was in good condition, that there were no caldrons, that in fact they

> "were looking for them because the manager told him that there ought to be, but it appeared that robbers had stolen them together with many of these pieces and had broken them into pieces, and everything was broken up."

And that only the boiler was left to indicate that there had been a sugar mill erected there before; that in the camarin there were a few traces of a furnace and no more, that the small hydraulic machine in Calamias was in very bad condition with its rollers broken. There was nothing there but rollers, fly-wheels and pinions where this hydraulic machine was. There was no camarin and no bricks. Everything was thrown about and although they went looking thereabouts, found nothing. As to the mill at Mapagon it could not be seen that there had been any camarin or sugar mill there because there was no camarin, no furnace, no anything, and that the rollers and roller bed were all unmounted and everything fallen and scattered about (Rec., pp. 55, 56). As to the mill at Siranglupa, they only found a broken boiler without fly-wheels, no cog-wheels, and the rollers quite

broken. There were no cylinders, no pans, and it was impossible to use it at the time of its removal. He tells us, explaining why when he received the order to remove all that machinery in 1903, it took him such a long time to accomplish it, during the years 1903, 1904, and 1905, that it was because sometimes he was in lack of carabaos for hauling and at other times there were also quite a number of bandits in the mountains and

> "at that time no one could do anything there because even the constables were killed and everything was paralyzed for some time and no one could work."

The next witness presented by the Government to prove the existence of the sugar mills and railway on the estate of Calamba, and that they were permanently fixed thereon and in good condition, was Charles N. Waet, who never went to the Calamba estate until the month of November, 1905, and at that time he saw all the remains of the sugar mills and rails already stored in the camarin of the appellant company at Calamba. When he saw this machinery in the camarin of the company (Rec., p. 59) many of the pieces were in a heap,

> "and they were placed in a certain place, and some parts were there and others a little farther, such as the boilers, which were separated."

(Rec., p. 60:)

> "Q. In what condition were the parts which you could see?
>
> "A. Some seemed to be in good condition, and others were broken.
>
> "Q. Can you specify how many you found in good condition?
>
> "A. No, sir.
>
> "Q. Which were those pieces you found in good condition?
>
> "A. I believe some of the axles were. I do not remember well.

"Q. Which is the only thing that you remember that was in good condition?
"A. Some wheels."

The third witness called by the Government to prove the existence of the mills and railway on the estate of Calamba at the time of the sale was Maximiliano Villanueva, whose testimony is exactly to the same effect as that of the two preceding witnesses, telling us, at Rec., p. 69:

"Q. Please specify when were these machines taken or when did you start to take them to town; was it in 1903?
"A. I do not remeember well whether it was in 1903 or 1904."

With evidence of that kind, can any court find that at the time the final deed of sale took place there existed on the hacienda of Calamba the sugar mills Mapagon, Mayapa, Calamias, Siranglupa, Punta, and Real, in the barrio of Majada?

The testimony of the witnesses for the Government which we have just quoted clearly supports our contention made in the three errors which head this chapter of our discussion.

Point Four.

THERE BEING NO RELEVANT OR COMPETENT EVIDENCE IN THE RECORD TO THE EFFECT THAT THE VALUE OF THE SUGAR MILLS AND TRAMWAY WAS (₱50,000) FIFTY THOUSAND PESOS, APPELLEE HAS FAILED TO PROVE ITS CASE, AND THE ACTION SHOULD THEREFORE BE DISMISSED.

Ninth Error.

The ninth statement of error is that the Supreme Court erred in finding that there is relevant evidence in the record about the value of the machinery and in relying on such evidence to establish that the value of said machinery was fifty thousand (50,000) pesos, Philippine currency. The only

evidence that we have been able to find in the record that may touch on the value of the machinery is that which the witnesses for the Government, Charles N. Waet and Thomas Taylor, pretended to give when they testified on behalf of the appellee. How the Supreme Court could make the statement that this evidence fully supports the contention of appellant that the value of the machinery claimed in the complaint was fifty thousand (50,000) pesos, is something beyond our comprehension.

The witness Waet, who (Rec., p. 69) at the time of testifying acknowledged on the witness stand that he had not had anything to do with sugar mills or machinery to such an extent that he had even to ask the names of different pieces of one Mr. Soriano, who accompanied him, pretends to give a valuation in the report which he made in the month of March, 1906, in regard to that machinery, based on what somebody else had told him that the machinery had cost, without having presented the informer, so that we might know how or where he obtained his knowledge of the price of such machinery. His testimony, therefore, is wholly irrelevant, incompetent, and worthless. The only other witness testifying as to the value of said machinery was Thomas Taylor, who tells us (Rec., p. 60) that he saw the machines on the 19th day of February, 1909. His direct testimony is as follows:

> "Q. Can you tell the court the parts which you found inside of that camarin; what was inside of the camarin?
>
> "A. I saw a good deal of machinery, some of which needed repair.
>
> "Q. Do you remember the parts of machinery which you saw then?
>
> "A. I did not take a detailed note of the parts.
>
> "Q. But in general?
>
> "A. I saw some which they call mill-rollers for sugar cane.
>
> "Q. Can you tell the court how much can those parts which you saw inside the camarin be worth?
>
> "Mr. Gutierrez: I object to the question because

the witness has testified that he did not take a detailed note.

"Judge: It is relevant.

"Mr. Gutierrez: Exception.

"A. About 50,000 pesos.

"Q. Have you examined the parts?

"A. Yes, sir.

"Q. Piece by piece?

"Mr. Gutierrez: I object; the question is leading.

"A. Yes, sir.

"Mr. Feria: That is all."

In cross-examination this witness (Rec., p. 61) after telling us that it took him twenty-four hours to inspect the machines, changes his statement and says "one-half: twelve hours," and then in answer to an identical question immediately afterwards he says that it took him ten hours to see the machinery. How did he examine the machinery? He tells us (Rec., p. 67): "As I said before, I did not make any detailed examination," and yet this man without any more preliminaries gives offhand his opinion that the machinery or the parts of the machinery which he saw stored in the year 1909 in the camarin of the company was worth 50,000 pesos. But in order to bring out with more force and clearness the incompetency of this witness and the utter worthlessness of his testimony in regard to the appraisal and value of the machinery, we shall quote at length his testimony as found in the record:

(Rec., p. 62:)

"Q. Can you now state positively that you have seen in Calamba even one machine of that manufacturer? (Buchanan.)

"A. No, I am not sure of it.

"Q. Of which other manufacturers were the machines which you said were there and you inspected and valued at fifty thousand pesos?"

(Rec., p. 63:)

"A. I did not take notice of the name of any manufacturer.

"Q. Did you take a note of the capacity of each one of those machines, their horse power, etc.?

"A. No. I know more or less the size of the machines, but I did not take any measurements or sketch.

"Q. Did you take any measurement of the boilers?

"A. No, sir.

"Q. The pieces which were in a heap, were they subjected to an inspection by you?

"A. Yes, sir.

"Q. Did you estimate the value of every single piece of those, which were in a heap?

"A. I have already said that I did not take any detailed note."

* * * * * * *

"Q. Have you sold in Manila at any time even one machine or boiler of the kind and trade-mark which you have seen in Calamba or of any other manufacturer?

"A. No, sir. None.

"Q. Then you have never had any intervention in the sale of machines or boilers of that kind, trade-mark, and factory, is it not so?

"A. Yes, that is true."

* * * * * * *

"Q. You do not know the price at which those machines are sold?

"A. No, in regard to those particular machines I do not know it."

(Rec., p. 64:)

"Q. Is there a single person in the Philippines whom you may succeed in selling one machine of the class, mark and factory which you have seen in Calamba for that price of fifteen thousand pesos?

"A. No, sir.

"Q. You have never sold any?

"A. I have never sold.

"Q. So that all you can say in regard to prices is approximately and according to your personal opinion?

"A. Yes, according to my own opinion."

(Rec., p. 65:)

"Q. What parts of those machines have you seen partially mounted, if any, in the camarin at Calamba?

"A. The tray, roller-beds and rollers.

"Q. Were they set up or were they thrown about the floor all broken up?

"A. They were near one another.

"Q. But they were on the floor were they not?

"A. Yes, sir.

"Q. So that none was set up or in its respective place?

"A. I cannot remember. It is possible that they were not set up."

* * * * * * *

"Q. How many complete machines have you seen?

"A. I have not seen any complete one"

* * * * * * *

"Q. How many cylinders have you seen in that camarin approximately?

"A. Steam cylinders?

"Q. Yes.

"A. I cannot say now.

"Q. Can you tell what was the size of the cylinders you have seen there?

"A. No sir, I cannot say.

"Q. Is it not true that all that inspection and examination that you say you made in Calamba consisted in entering the camarin about two steps from the door, glancing over the boilers and parts of machinery which were piled up and others scattered on the ground together with other parts, and without doing anything else proceeding to appraise them at 50,000 pesos all at once just as you could have appraised them in the sum of 500 pesos?

"A. I have a note that there were five sugar mills with their boilers and machinery.

"Q. You know that according to the cylinder of a machine so its power and price varies?

"A. Yes, sir.

"Q. They gave you the charge of making the appraisal and you did not take note of the cylinders, nor of their capacity, nor of the boilers, nor of the manufacturer, nor of anything at all?"

(Rec., p. 66:)

"A. That is true. I didn't."

* * * * * * *

"Q. In appraising the value of boilers are you ignorant of the fact that those data (tubes, diameter, and capacity) are essential to determine the price, such as the size of the tubes, the diameter, etc., the dimensions of the boiler, etc., etc.?

"A. I saw the boilers but I did not take note of their dimensions.

"Q. On what have you based your fabulous estimate of fifty thousand pesos for those two boilers, and those other pieces which you say you saw on the ground. Have you made an examination and inventory of each and every one of the pieces which make up that value which you give them now?

"A. No, but as I said before there were five mills with their machines and boilers. Of the five mills only three were steam mills and the other two hydraulic."

(Rec., p. 67:)

"Q. From what you saw there you cannot tell what parts you saw and examined, nor how many machines there were there, nor whether any parts were missing, nor what they had or what they lacked.

"A. No, but I have already given my opinion."

And upon the wonderful testimony of this witness the Supreme Court makes the astounding finding that the evidence adduced by appellee fully supports the contention of the

Government that the value was that alleged in the complaint, viz., 50,000 pesos!

We respectfully submit that even if the appellant had not adduced any evidence and had to confine itself to demur to the evidence adduced by the appellee in support of the facts alleged in the complaint upon the issues raised by the general denial of the appellant, a demurrer to the evidence should have been sustained and the case could not but be thrown out of court.

Appellant's Evidence.

We respectfully submit to this honorable Court that even if we had not raised the other questions submitted to the consideration of this court in the other errors discussed in this brief, this error alone would be sufficient to justify a reversal of the decision of the Supreme Court of the Philippine Islands.

Against the evidence adduced by the appellee, appellant proved, not by a mere preponderance of the evidence but beyond reasonable doubt and with positive and uncontradicted evidence:

1st. That at the time of the signing of the preliminary agreement of sale on the 22d day of December, 1903, the draft of said preliminary agreement contained in one of its paragraphs a clause in which there were made part of the agreement of sale all the buildings, sugar, and rice mills and machinery, irrigation works, dams, tunnels, ditches, and all other improvements existing in and on the hacienda, differentiating the sugar and rice mills and machinery from the meaning of the general descriptive words "and all other improvements thereon."

2d. That upon the objection of the representative of the appellant company the words "sugar and rice mills and machinery" were stricken off the said paragraph, leaving the

rest of the same as it was before. In support of this the draft itself was introduced in evidence showing the words "sugar and rice mills and machinery" stricken off and crossed out with red pencil, and said draft was introduced in evidence by the appellant. The draft itself is now before this Court, having been attached to the record and a facsimile of it forms part of the printed record filed in this Court.

3d. That after the preliminary agreement was signed and prior to the execution of the final deed of sale, to wit, on the 24th day of December, 1904, the representatives of the vendor company and the Government met to discuss the draft of the final bill of sale; that in the said draft the words "sugar mills" were again mentioned and upon objection of the representative of the appellant company the same were stricken out. The official record of that interview as found in the files of the Executive Bureau of the Philippine Islands was introduced in support of this fact and was presented in evidence by the appellant and can be seen in the record at pages 43 to 49, inclusive. As if this were not sufficient, appellant proved furthermore not only by the testimony of its witnesses but by the testimony of the witnesses for the appellee itself,

(*a*) That prior to the signing of the preliminary agreement of sale of December 22, 1903, the rails of the tramway had been taken up and removed from the estate (see testimony of Inocencio Hernandez, Rec., p. 52; testimony of Villanueva, Rec., p. 67; testimony of Francisco Gutierrez Repide, Rec., pp. 70, 71; letters of Gutierrez to Inocencio Hernandez, Rec., p. 96).

(*b*) That the mill Real never formed part of the portion of the estate sold by the appellant to the appellee (Rec., p. 29, report of Waet).

(*c*) That the mill Punta was dismantled and stored in 1897, six years before the preliminary agreement of sale

was signed (Rec., p. 31; also testimony of Villanueva, Rec., p. 69):

> "Q. When this machine was taken to town, how was it?
> "A. In the time of the Spaniards, Mr. Ibarra, the owner, himself took it to the lot which he had at Calamba."

(*d*) That all of the sugar mills had been removed from the estate during the years 1903, 1904 and 1905, which fact is not only admitted by the witnesses for the appellee, but also is fully admitted in the report filed by Waet in the month of March, 1906, as having seen the remains of this machinery in the camarin of the company in the month of March, 1906.

(*e*) That the mills and tramway were not part of the estate at the time the preliminary agreement of sale was signed, and that, therefore, were not part of the estate when the final deed of sale was made, for the reason not only that they had been dismantled and removed from the estate, but also because they had been sold to Mr. Enrique Rueda, for the sum of 8,000 pesos as scrap iron (Rec., p. 96, and pp. 72-73).

The testimony of Gutierrez Repide stands uncontradicted (Rec., p. 74) that those mills had not been appraised by the Government's expert and had been sold to Enrique Rueda. This is the statement of Mr. Gutierrez (Rec., pp. 73, 74):

> "This, I repeat, is the draft of the Government which was handed to me by the actual President of the United States, Honorable William H. Taft, and as soon as I saw this about sugar mills and rice mills and machinery I told Mr. Taft to strike it out and to remember that in prior discussions we had agreed that the mills or machines were not included in the sale for the reason that not having been appraised by Villegas they had been sold by me before to Don Enrique Rueda. Before this time I made these state-

ments to Mr. Taft I remember that at the last discussion I had with all the members of the Civil Commission, sitting in session, formed by Messrs. Taft, Ide, Wright, Smith and Legarda on December 16, 1903, the discussion in regard to several particulars of the sale lasted two hours. During the course of that discussion Commissioner Smith asked me if the mills or machinery were included in the sale, and I repeated what I have so many times told to Mr. Taft, and it was confirmed by him, that the mills were not included in the sale, because they had already been sold to Don Enrique Rueda, for the reason that they had not been appraised by the Government's expert. That is why this draft was amended in that part which relates to the mills, besides the other amendments introduced in the same." (Witness refers to the draft, the facsimile of which appears in the record.)

Comparing this positive and uncontradicted proof submitted by the appellant with the incompetent testimony of witnesses for the plaintiff, and taking into consideration the fact that the Government has failed to prove the most material and vital points of its case, which was the existence of the sugar mills on the hacienda at the time the deed of sale was executed, in view of the fact that the old description of the estate recited that it was believed that these mills had been destroyed, in part at least, by the insurgents, is there not an overwhelming preponderance of evidence that would justify the findings of the Court of First Instance of Manila and the reversal of the findings made by the Supreme Court of the Philippine Islands? There is only one answer to this question, and that is in the affirmative, and so we submit it to the consideration of this honorable Court.

Point Five.

THE REVERSAL OF THE FINDING OF FACTS MADE BY THE COURT OF FIRST INSTANCE WAS UNAUTHORIZED BY THE RULES OF THE SUPREME COURT AND AGAINST THE LAW.

Fifth Error.

In support of our contention in this fifth error we shall limit ourselves to quoting rule 20 of the Supreme Court of the Philippine Islands, which reads as follows:

> "No error not affecting the jurisdiction over the subject-matter will be considered unless stated in the assignment of errors and relied upon in the brief,"

which rule has been the subject-matter of the decisions found in the following cases: *Paterno vs. The City of Manila*, 17 Phil. Rep., 26, which was dismissed because the brief presented in that case made no specific assignment of errors, but argued two questions in a general way; the case of *Santiago vs. Felix*, 24 Phil. Rep., 378, and the case of *Santos vs. Ribera*, 28 Phil. Rep., 513, the latter two being to the same effect.

If we turn now to the record, at page 120, we shall find that the appellee assigned only three errors to the judge of the Court of First Instance of the City of Manila:

1st. Against the overruling of the demurrer of the appellee to the appellant's special defense;

2d. The admission of appellant's evidence;

3d. Not sentencing the appellant to the payment of 50,000 pesos.

We see in no part of this assignment of errors any error assigned to the conclusions of fact made by the Court of First

Instance of the City of Manila, and as to the interpretation of the contract, and therefore on appeal to the Supreme Court the interpretation given by the trial court to said contract, as follows:

> "After the suggestion which the Governor General made to the Solicitor General, to the effect that he and Mr. Del-Pan should hold a conference with Mr. Gutierrez to find out what change and reforms the latter proposed, in order to see if there was any real point of disagreement between them, the conference or interview was again resumed, in which neither Governor General Wright nor Mr. Del-Pan made any objection to the change proposed by Mr. Gutierrez, both gentlemen stating that the matters involved in said change were so insignificant and so unimportant that they were simply a mere change of words. Not a word was spoken further about the sugar mills, nor were these mentioned in the deed of sale of October 19, 1905. This shows, without the slightest doubt, that the parties, on striking out said words from the document, agreed not to include them in the sale as demanded by the representative of the vendor, because they were not legally part of the *hacienda*. As the conclusion to be drawn from the conference held between the civil governor and Mr. Gutierrez as representatives of the two contending parties who intervened in the execution of the deed of sale already mentioned on December (October?) 19, 1905, is that they had no intention to include therein the mills which are the subject-matter of this case and are claimed by the plaintiff, said plaintiff has no right to them, and the complaint filed in this case cannot be sustained,"

could not be disturbed. In support of this contention we beg, furthermore, to cite the following decision of the Supreme Court of Spain:

> "In the matter of the understanding and interpretation of a contract, the interpretation given by the trial court, and accepted by it as the intention of the parties, cannot be prescinded with, and said interpre-

tion must have preference over that sustained by the appellant, if the latter has not alleged and set up said interpretation as evidence of error committed by said trial court" (Judgment of the Supreme Court of Spain, of November 21, 1908).

Point Six.

Third and Fourth Errors.

In the assignment of errors we alleged that the Supreme Court of the Philippine Islands erred

(*a*) In not taking into account and considering for the interpretation of a written contract and declaration of rights and obligations of parties thereto, not only the words contained in said contract in their strict grammatical meaning, but the spirit that prompted them and the purpose which said parties wanted to agree upon.

(*b*) In not making the intention of the parties prevail in a written contract when from the evidence adduced at the trial said intention can be ascertained rationally and logically from acts executed by those parties.

For the consideration of these errors we simply desire to refer to our discussion of the first and second errors and close it with the citation of two judgments of the Supreme Court of Spain bearing on Articles 1282 and 1283 of the Civil Code in force in the Philippine Islands, which are the law which we invoke in our favor. Those decisions are as follows:

> "In order to establish the rights and obligations originating from written contracts, attention must be paid with equal force both to the strict grammatical meaning of the words as well as to the spirit which prompted them, and the purposes sought by the contracting parties; and the latter's intention shall prevail over the terms used in the agreement when

such intention can be deduced rationally and logically from the acts executed by the parties to carry such agreement into effect." Judgment of the Supreme Court of Spain, March 20, 1902.

"According to the doctrine established by the Supreme Court in accordance with Article 1282 of the Civil Code, when doubts arise as to the understanding of the contract or when one of the parties alleges that he is ignorant of its import and real objects, it becomes necessary to consult the facts which preceded the execution of said contract, the circumstances surrounding it, the intention and purpose of the contracting parties, as well as the acts, subsequent and related thereto, so as to be able to declare the effectiveness or inefficacy of the obligations." Judgment of the Supreme Court of Spain, November 21, 1908.

"When doubts arise as to the understanding of a contract or when one of the parties alleges that he is ignorant of its import and purpose, it becomes indispensable in order to determine these to consult the acts preceding and leading up to its celebration, all the accompanying circumstances, the intention and purpose of the contracting parties, and the subsequent acts of the latter in regard thereto." Judgment of the Supreme Court of Spain, January 20, 1871, and the judgment of April 3, 1884.

And finally Manresa, vol. 8, p. 672, says as follows:

"The import and meaning of this article (Article 1283) and of the jurisprudence in regard to it, is to prevent the imposition of obligations which have not been accepted or the exaggeration of those contracted."

Eleventh Error.

The Supreme Court erred in reversing the decision of the trial court. When the decision of the Supreme Court was rendered, appellant duly excepted thereto and moved for a reconsideration of the same, based in that the decision rendered was contrary to the evidence adduced and was contrary to law. Appellant filed a brief which accompanied

the motion for a rehearing, and which can be found at pages 132 to 135 of this Record, and we beg to incorporate said brief in the present brief, by reference, and respectfully submit that on the grounds therein stated the motion for a rehearing should have been granted.

In view of the foregoing considerations, our last assignment of errors as to the fact that

Twelfth Error.

The Supreme Court erred in rendering a judgment against the defendants, is a natural consequence, and we beg to submit that it has been fully sustained by our argument.

CONCLUSION.

In concluding, we respectfully submit

(*a*) That the Supreme Court of the Philippine Islands in the decision rendered in this case gave an arbitrary interpretation to section 285 of the code of Civil Procedure of the Philippine Islands against the sound principles of law and equity.

(*b*) That the Supreme Court of the Philippine Islands rendered its decision in this case in utter disregard of the provisions of sections 1282 and 1283 of the Civil Code in force in the Philippine Islands.

(*c*) That there is nothing in the record which could justify in the least the statement of the majority decision of the Supreme Court of the Philippine Islands that the facts alleged by plaintiff in its complaint had been proved or that the value of the property claimed was 50,000 pesos.

(*d*) That the Supreme Court of the Philippine Islands refused, contrary to law, to consider any of the evidence adduced by the appellant when such evidence was lawfully

presented and was clearly admissible under the specific denial made in the general answer of the appellant.

(*e*) That the decision of the Supreme Court of the Philippine Islands has been rendered contrary to the facts proved in the case and contrary to law.

In view of the foregoing considerations we respectfully ask this honorable Supreme Court to reverse the decision of the Supreme Court of the Philippine Islands and dismiss the complaint of the appellee, with costs.

Respectfully submitted,

ANTONIO M. OPISSO,
Attorney for Plaintiff in Error and Appellant.

DECEMBER, 1917.

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No. 521.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

PHILIPPINES SUGAR ESTATES DEVELOPMENT COMPANY, Ltd., *Plaintiff in error and Appellant.* *vs.* THE GOVERNMENT OF THE PHILIPPINE ISLANDS. *Defendant in error and Appellee.*	IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

REPLY OF PLAINTIFF IN ERROR AND APPELLANT TO THE MOTION BY THE GOVERNMENT OF THE PHILIPPINE ISLANDS TO DISMISS.

Comes now the plaintiff in error and appellant and respectfully asks this Court to overrule and deny the motion to dismiss filed by counsel for the

defendant in error and appellee, inasmuch as the grounds on which said motion is made, and the reasons alleged in support thereof fail to justify the contention of the Government of the Philippine Islands that this Court has no jurisdiction of this writ of error and appeal.

ANTONIO M. OPISSO.
Counsel for Plaintiff in Error and Appellant.

BRIEF OF THE PLAINTIFF IN ERROR AND APPELLANT IN REPLY TO THE MOTION OF DEFENDANT IN ERROR AND APPELLEE TO DISMISS.

Although the statement of the case made by counsel for defendant in error and appellee is, in general terms, correct, yet, counsel for plaintiff in error and appellant believes that certain facts should be more plainly and fully stated, and other facts appearing in the record brought out, so as to give a clearer and more complete understanding of all the questions submitted to the decision of this Court by the motion filed by counsel for defendant in error and appellee. In view of this, counsel for plaintiff in error and appellant begs to submit the following:

STATEMENT OF THE CASE.

On the basis of jurisdictional amount, this case is here on writ of error to an appeal from the Supreme Court of the Philippine Islands for review

of what we allege to be, and defendant in error claims not to be, a final judgment of that court.

On December 22, 1903, the Philippines Sugar Estates Development Company, Ltd., a corporation organized in conformity with the laws of the Philippine Islands, agreed by written contract, and after long and prolix negotiations with the representatives of the Government of the Philippine Islands, to sell to that Government eight *haciendas,* formerly the property of the Dominican Order of Friars in the Philippines, and at that time the property of said Philippines Sugar Estates Development Company, Limited, stipulating (R., 5) that said sale and conveyance should include all the dwelling houses, farm houses, warehouses, camarines, and other buildings, irrigation works, dams, tunnels, ditches, and all other improvements, together with water and other rights, and all hereditaments *"belonging to the company on every part of the estates agreed to be conveyed,"* and so forth.

On October 19, 1905, in partial compliance with said agreement, the Philippines Sugar Estates Development Company, Ltd., executed a deed of sale of the Calamba Estate, one of the haciendas named in that agreement. In said deed of sale the property conveyed is described twice. The first description is the old and somewhat imperfect description of the estate (R., 9-10) as contained in the old title deeds of the hacienda (R., 91-92), and, although in said description the names and designation of several sugar mills are given and inventoried as located in the hacienda, yet it is said (R., 10, and 92) that "It is believed that these

mills have been destroyed, at least partially, by the insurgents." After giving the aforesaid description as contained in the old title deeds, a new one is given, purporting to be an exact description of the estates conveyed and sold "According to the survey and measurements of the said property recently made by the engineers and surveyors of the Philippine Government." (R., 10), no reference being made in this exact description of the estates to any sugar mills or railways; and, although the deed of sale further recites in the conveyance as including in the sale "all rights and actions which the corporation *has or may legally have* in and to all buildings and irrigation works, together with all water rights, town rights and other improvements and hereditaments *existing in and on the hacienda*" (R., 11), no express reference is made to any railroads or sugar mills.

Prior to the execution of this deed of sale, and even before the preliminary agreement to sell and convey the haciendas was entered into (R., 18-20), these sugar mills had been sold to a third party, and had, in fact, been sold to one Enrique Rueda in the month of October, 1903 (R., 96-101), and stored, not *in or on the* hacienda sold, but in a camarine belonging to the vendor company, situated in the town of Calamba, where they continue at the present time.

One year after the execution of the deed of sale of the Calamba Estates, the Government of the Philippine Islands filed a suit in the Court of First Instance of Manila against the Philippines Sugar Estates Development Company, Ltd., and the Dominican Order of Friars (R., 1), setting up,

first, the preliminary agreement of sale, and second, the actual deed of sale and the contract, and claiming the sum of P50,000 as damages for the alleged unauthorized removal of the sugar mills and railroads, prayed a joint and several judgment against the co-defendants for the said amount, with interest and costs (R., 4). Summons was served upon both defendants on October 16, 1906 (R., 14). The defendants filed a demurrer, which was overruled (R., 15-16), and finally, an answer (R., 17), and two supplemental answers (R., 18, 19, 20, 21) denying that it was the effect of the transactions to convey the sugar mills and railroads as claimed by plaintiff. The parties, after having joined issue and having postponed the hearing of the case several times, finally set the case for trial on the 25th of October, 1911.

All the evidence adduced by both parties at the trial (R., 25-98) seems to deal exclusively as between the Government of the Philippine Islands and the Philippines Sugar Estates Development Company, Ltd., not once the Dominican Order of Friars appearing to have any direct intervention in said trial outside of the recital by the stenographer that Counsel representing the Philippine Sugar Estates Development Company Ltd. was also representing the Dominican Order of Friars. So much so, that, while the case was being tried, the Government of the Philippine Islands considered only one defendant in the case, as witnessed by a notice given by the Attorney General of the Philippine Islands to counsel for the Philippines Sugar Estates Development Company, Ltd.

(R., 93), which he addresses to: "Mr. Eduardo Gutierrez, attorney for the defendant."

It appears, therefore, that the case was virtually discontinued by the Government of the Philippine Islands against the Dominican Order of Friars, which fact is finally brough out and enhanced by the opening paragraph of the decision rendered in the Court of First Instance of Manila, which reads as follows (R., 98):

"Decision.

> Action was brought by the Government of the Philippine Islands against the Philippines Sugar Estates Development Company, limited, demanding payment of the sum of P50,000, together with the legal interest thereon from the date of the complaint, and the costs of this case."

And judgment is rendered by the same Court (R.,101) in the following words:

> "The Philippines Sugar Estates Development Company, Limited, is acquitted from the complaint without any express ruling on the costs."

The Government of the Philippine Islands considered, and truly so, this judgment final, and without insisting that its rights against the Dominican Order of Friars, an original party defendant in the case, should be the subject of the ruling of the Court, treated the judgment as final, and afterwards filed a motion for a new trial, based on the

fact that the decision rendered in the case was not in accordance with the law nor with the evidence adduced, and appealed from said judgment to the Supreme Court of the Philippine Islands (R., 103).

From this time on, the record does not disclose that the Government of the Philippine Islands insisted in its suit against the Dominican Order of Friars, the only errors assigned by said Government of the Philippine Islands being (R., 120).

> *First,* That the Court erred in overruling the demurrer filed by plaintiff to the special defense alleged in the answer of the defendant;
>
> *Second,* That the Court erred in admitting the evidence adduced by the defendant tending to modify or vary the terms of a written contract entered into between the plaintiff and said defendant; and
>
> *Third,* That the Court erred in not sentencing the defendant to the payment of P50,000, the value of the railroad and the sugar mills claimed in the complaint.

It is thus seen that, by its own acts, the Government of the Philippine Islands abandoned any claim or rights against the Dominican Order of Friars, the only party brought by the Government's appeal to the Supreme Court of the Philippine Islands being the Philippines Sugar Estates Development Company, Limited.

The case was set for hearing before the Supreme Court of the Philippine Islands, and said Supreme Court, on March 4, 1915, rendered the final deci-

sion of this case, from which the Philippines Sugar Estates Development Company, Ltd., has appealed to this Court.

Although it is true that the record, as printed, only discloses the names of Justices Moreland and Carson in the opinion reversing the decision of the lower court, and the name of "Arellano, J." as dissenting, yet counsel for plaintiff in error and appellant begs leave to refer to Appendix A of this answer, wherein it is clearly seen that two more Judges of said Supreme Court were present at the hearing of the case and concurred in the decision, their names having been omitted through inadvertence and oversight of the clerk who certified the record to this Court, as certified to by said clerk.

Further reference is made to the motion filed simultaneously with this answer by plaintiff in error and appellant, asking leave of this Court to have the record amended by supplying the words omitted from the same through oversight and inadvertence by the Clerk of the Supreme Court of the Philippine Islands.

The concluding paragraph of the majority opinion of the Supreme Court of the Philippine Islands reads as follows:

> "The judgment is reversed and the cause remanded to the Court of First Instance, with instructions to enter judgment in favor of the plaintiff and against the defendant in the sum of P50,000 with interest from the commencement of the action. After the expiration of 20 days let judgment be entered in accordance herewith, and ten days thereafter *let the case be returned to the Court for execution.*"

On which the following judgment was issued:

JUDGMENT.

"The Court having regularly acquired jurisdiction in the above entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record its decision and order for judgment having been filed on the 4th day of March, A. D. 1915, by virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 8th day of February, 1912, and from which the above entitled appeal was taken, be and the same is hereby received (reversed), and let the case be returned to the Court of First Instance with instructions to render judgment in favor of the plaintiff and against the defendant for the sum of P50,000 with interest from the date the action was filed.

"It is further ordered that recover from the sum of as costs.

("Signed) V. ALBERT,

"Clerk of the Supreme Court of the Philippine Islands."

From said judgment and from the decision of the Supreme Court of the Phillippine Islands in the appeal interposed by the Government of the Philippine Islands against the Philippines Sugar Estates Development Company, Limited, this Company has sued out a writ of error and appeal (R., 137, 143), which are those now pending before this Court.

ARGUMENT.

The argument of counsel for defendant in error and appellee rests mainly on the fact that the record contains no final judgment, alleging as grounds therefor:

> *First,* That the record discloses no judgment at all; and,
>
> *Second,* That even if the defective record be taken as importing a judgment in favor of the Philippine Government, the judgment is not final because
>
> (*a*) The case is still pending in the courts below as to one of the parties to the suit, to-wit, the Dominican Order of Friars; and,
>
> (*b*) The case is still pending in the courts below as to the question of costs.

A. As to the first point, that the record discloses no judgment at all, it is respectfully submitted that even granting that the record, as it stands in its printed form before this Honorable Court, only discloses the names of three of the Justices of the Supreme Court of the Philippine Islands as taking part in the decision of this case, yet the fact that the record discloses also that the motion for a rehearing was made by plaintiff in error and appelant, and this motion was received, set for hearing, and decided by the Supreme Court of the Philippine Islands (R., 132-135), coupled with the fact that final judgment was rendered on April 8th, 1915, the clerk stating in the first paragraph that the court *had regularly acquired juris-*

diction in the case, and that *the decision was the decision of the Court,* raises a sound presumption that the necessary number of judges, as required by Sections 2175 and 2169 of the Compilation of the Act of the Philippine Commission, 1908, was present. And as to this, reference is made to Appendix A attached hereto and made a part of this answer, wherein it is found that the names of two of the other Justices who sat at the hearing of the case on appeal were inadvertently overlooked and omitted by the Clerk of the Supreme Court of the Philippine Islands in preparing the transcript of the record, in pursuance of this writ of error and appeal.

It is therefore, respectfully submitted that the first ground upon which the contention of the defendant in error and appellee is based, totally fails to be substantiated.

B. (*a*) Counsel for the Philippine Government, realizing that if his argument simply rested on this ground, it would utterly fail on the face of the mere presumption raised by the record, as admitted in the first premise of the second ground relied on by him, alleges, furthermore, that the judgment is not final, because the case is still pending in the courts below as to one of the parties to the suit, to-wit, the Dominican Order of Friars.

It is true that this case was originally instituted by the Philippine Government, on a joint and several obligation, against the Philippine Sugar Estates Development Company, Limited, and the Dominican Order of Friars, but it is none the less true that the record also discloses the fact that, if

not expressly, at least impliedly, the Government of the Philippine Islands desisted from its action against the Dominican Order of Friars, and that the action was discontinued as to that defendant by operation of law.

As indicated heretofore, while the case was still pending trial before the lower court, on November 21, 1911, the Attorney General, counsel for the Philippine Government, addressed Mr. Eduardo Gutierrez as "attorney for the defendant" (R., 93), meaning attorney for the defendant, the Philippine Sugar Estates Development Company, Limited. The record also discloses (R., 98, 101) that the case was submitted to the Court of First Instance of Manila as between the Government of the Philippine Islands and the Philippines Sugar Estates Development Company, Limited; and the record furthermore discloses (R., 103) that the Government of the Philippine Islands, through its counsel, the Attorney General, considered that judgment final and conclusive between the parties by moving for a new trial, and not alleging in its motion as ground for the new trial that no ruling had been made as to the other defendant.

The record discloses still further that the judgment of the Court of First Instance was considered final and conclusive as between the parties by the Government of the Philippine Islands by its appeal to the Supreme Court of the Philippine Islands, and that no further action was intended as against the Dominican Order of Friars, since in the errors submitted to the Supreme Court of the Philippine Islands for the hearing and determination of the appeal (R., 120) no mention is made of

the omission of the Dominican Order of Friars from the ruling of the court below. And finally, the decision of the Supreme Court of the Philippine Islands clearly shows that no attempt was made by the Government of the Philippine Islands to have the other defendant, the Dominican Order of Friars, included as such in this action.

The case having, therefore, been discontinued by operation of law as to the Dominican order of Friars, the only parties to the action are the same parties who are now present before this Court, to-wit, the Philippine Government and the Philippine Sugar Estates Development Company, Limited. (See *Callaghan vs. Myers,* 98 Illinois, 566, *Flynn vs. Barlow,* 16 Ills. 39; *Wilderman vs. Sandusky,* 16 Ills., 59. See also, *Amis vs. Smith,* 16 Peters, 303; *Smith vs. Clapp,* 15 Peters, 125.)

If the above considerations were not conclusive to demonstrate that this contention of defendant in error and appellee is untenable, it is respectfully submitted that the very wording of the decision and the judgment of the Supreme Court of the Philippine Islands shows clearly that it is a final judgment. We have quoted heretofore (Page 8) the concluding paragraph of the decision, wherein we see that *the judgment is reversed and the case remanded to the Court below, with instructions to enter judgment and for execution,* and it has been held time and again by this Honorable Court that a judgment of the Supreme Court of a State reversing the judgment of a lower court with directions to enter judgment upon the findings for the plaintiff has been held to be final (*Mower vs.*

Fletcher, 114 U. S., 127); "That when a decree * * * * directs the defendants to pay a certain sum of money to the complainant, and the complainant is entitled to have such decree carried into immediate effect, the decree must be regarded as final to that extent so as to authorize an appeal" (6 Howard, 201); "That a decree is final for the purpose of an appeal when it terminates the litigation between the parties and leaves nothing to be done but to enforce it by executing what has been determined" (*St. Louis Railroad Company vs. Express Company,* 108 U. S., 28).

In Ex parte *National, etc., Company,* 201 U. S., 136, which is one of the cases cited by defendant in error and appellee in support of his contention, this Court in discussing the case of *Forgay vs. Conrad* (6 Howard 201-205), which is the leading case on this subject, said: "In that case the Circuit Court of the United States passed a decree declaring sundry deeds to be fraudulent and void, directing the lands and slaves therein mentioned to be delivered up to the complainant, and also directing one of the defendants named in the decree to pay him $11,000, and 'that the complainant do have execution for the said matters aforesaid in conformity with the law and practice described by the Supreme Court of the United States,' the court refused to dismiss the appeal, holding that while the decree was not final in the strict technical sense of the term, yet in view of the effect of the orders entered and the fact that, unless the review was granted at once, there might be irreparable injury, the decree must be regarded as final to that extent."

And in discussing the same question and making reference to the same *Forgay* case, this Court in the case of *Beebe vs. Russell* (19 Howard, 283) further stated that the question "was made upon the decree given by the court below, and it was adjudged by this Court to be final to give this Court jurisdiction of it, but it was so upon the ground that the whole merits of the controversy between the parties had been determined and that *execution had been awarded,* and that the case had been referred to the Master merely for the purpose of adjusting the accounts."

The test of the finality of a decree is given in the opening words of the decision of this Court in the case of *Bank of Roudout vs. Smith,* 156 U. S., 330-333, also cited by the appellee in support of his contention. "A decree to be final for the purposes of appeal must leave the case in such a condition that if there be an affirmance in this Court, the court below will have nothing to do but to execute the decree it has already entered."

So it is respectfully submitted that even if a special pronouncement in favor or against the Dominican Order of Friars were necessary to consider the judgment of the Court of First Instance of the City of Manila and the decision of the Supreme Court of the Philippine Islands as final in the technical sense of the word, yet, in view of the above authorities said decision and said judgment must be considered final as between the Philippine Government and the Philippines Sugar Estates Development Company, Limited, inasmuch as all the merits of the controversy pending between them has been disposed of and cannot be again reopened,

except on appeal from that decree. (*Hill vs. Chicago & Evanston Railroad Company,* 140 U. S., 52).

B (*b*) The final position taken by the Philippine Government in support of its contention that there is no final judgment is that the case is still pending in the courts below as to the question of costs. If, as counsel for the Philippine Government admits, the laws of the Philippine Islands do not specially provide that in actions at law the costs shall of necessity follow a judgment for the prevailing party, how, after that statement, can said counsel maintain that a judgment or a decision of any court of the Philippine Islands is not final because no award is made of costs? The question has never been presented and has never been decided as to whether the quasi sovereignty of the Philippines may recover costs on the reversal of a judgment against it, and it is not proper or even advisable that this question should be the subject matter of discussion on a motion to dismiss and appeal. If at all, it would only be submitted as error on appeal, by appellant and not by appellee. As a general rule, however (and a perusal of all the records and reports of the decisions of the Supreme Court of the Philippine Islands will disclose this fact), no costs are allowed to the prevailing party in case of reversal of a judgment on appeal by the Supreme Court. This being the practice established by that Court, we see no reason why it should be disturbed or be alleged as ground to attack the finality of a judgment or decision rendered by that Court.

CONCLUSION.

The record discloses a final judgment, and therefore this Court has jurisdiction of the present case, and in view of the foregoing considerations it is respectfully asked that the motion to dismiss the writ of error and appeal be denied.

ANTONIO M. OPISSO,

Counsel for Plaintiff in Error and Appellant.

April 25th, 1917.

APPENDIX A.

THE UNITED STATES OF AMERICA.

PHILIPPINE ISLANDS.

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

R. G. No. 7992.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, *Plaintiff and Appellant,*

versus

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT CO. Ltd., and Others, *Defendants and Appellees.*

MORELAND, J.:

This is an action begun by the Government of the Philippine Islands against the Philippine Sugar Estates Development Company, Limited, and the Order of the Dominicans to recover the sum of P50,000.00, the value of a railroad and various sugar mills which, according to the complaint,

formed a part of the real estate, consisting of a certain hacienda, sold by the defendants to the plaintiff and which, after such sale, were illegally removed from said hacienda by the defendants and converted to their own use.

The defendants answered the complaint admitting the sale of the hacienda, also substantially admitting the removal of the railroad and sugar mills, but denied that the latter were included in the hacienda the sale of which is the basis of the action.

As a special defense the defendants alleged "that on the execution of the conveyance to the Insular Government, which is annexed to plaintiff's complaint and marked Exhibit 'B', it was understood by the parties to the conveyance that such conveyance did not include the same railroad or sugar mill and their accessories, for which suit has been brought, and although such conveyance contains the words 'and all other improvements and accessories at the present time on said hacienda' as having been included in the sale, it was understood by the parties that the said railroad and sugar mills and accessories were not included in that general description, nor was it the intention of the parties to include them, 'and for this reason the defendants impugn the contract annexed to the complaint in so far as it may be construed in a sense contrary to this position, on the ground that it does not express the real intention of the parties."

The plaintiff demurred to the portion of the answer above quoted upon the ground that it was not a defense, "as the evidence which would have

to be offered in support thereof was incompetent, irrelevant and immaterial in that such evidence, if offered, would be parol evidence and would vary the terms of a written instrument." The demurrer was overruled and the cause went to trial. The court found in favor of the defendants, dismissing the complaint on the merits. This appeal is from that judgment.

The question before us for decision is whether the conveyance from the defendants to the plaintiff includes, as matter of law, the railroad and the sugar mills, with their accessories, the subject of this dispute, and whether in case they are included in the conveyance, parol evidence is admissible to exclude them.

On the 22nd day of December, 1903, the parties of this action entered into a contract for the sale of certain lands and premises therein described, among others, lands known as the Calamba Sugar Estate. In that contract appears the following:

> "This sale and conveyance shall include all the dwelling-houses, farm-houses, ware-houses, camarines and other buildings, irrigation works, dams, tunnels, ditches, and all other improvements, together with all water and other rights of hereditament belonging to the company on every part of the estates hereby agreed to be conveyed."

In the final conveyance, made in pursuance of this contract and which is the basis of this action, the following clause appears relative to the Calamba hacienda:

> "And, furthermore, I declare that there is included in this sale and is hereby ceded and conveyed to the Government of these Islands, all the rights and interests which the company which I represent has or may legally exercise in the buildings, irrigation works, water rights, improved lands, and all other improvements and accesories, which exist in the hacienda or lands sold and conveyed by this instrument."

We held in the case of Fernandez *vs.* Shearer, 19 Phil. Rep. 75, that sugar mills constitute an improvement of the lands upon which they are built and are subject to taxation as real estate. We also held in the case of Bischoff *vs.* Pomar, etc. 12 Phil. Rep. 690, that a mortgage given on real estate includes and constitutes a lien upon sugar mills and other improvements affixed to and forming part of the land at the time the mortgage was given.

Under these holdings, the sale of the land would carry with it, without further words, all the improvements existing thereon at the time of the sale and forming part thereof. Certainly such improvements, whether railroad or sugar mills, would be included in the phrase "all other improvements and accesories."

Section 285 of the Code of Civil Procedure is as follows:

> "Written agreement presumed to contain all the terms of the agreement. When the terms of an agreement have been reduced to

writing by the parties, it is to be considered as containing all those terms, and therefore, there can be, between the parties and their representatives or succesors in interest, no evidence of the terms of agreement other than the contents of the writing, except in the following cases:

"(*a*) Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, is put in issue by the pleadings;

"(*b*) Where the validity of the agreement is the fact in dispute; but this section does not exclude other evidence of the circumstances under which the agreement was made, or to which it relates, or to explain an intrinsic ambiguity, or to establish its illegality or fraud. The term 'agreement' includes deeds and instruments conveying real estate, and wills as well as contracts between parties."

It is contended that parol evidence is admissible in the case at bar to show that it was understood between the parties at the time the sale was made that neither the sale of the real estate itself nor the additional words "all other improvements and accessories" were intended to include the railroad and the sugar mills,—indeed, that it was expressly agreed at the time the conveyance was executed that they should be excluded. The authority for this contention is to be found, it is alleged, in that part of paragraph 1 of the section just quoted which makes an exception to the general rule that parol evidence cannot be introduced to contradict or vary the terms of a written instrument, and per-

mits its introduction when the writing "fails to express the true intent and agreement of the parties," which failure "is put in issue by the pleadings." The defendants claim that, if the sale of the real estate, without further words, or if the words "all other improvements and accessories" are held, as matter of law, to include the railroad and sugar mills then on the land and forming part thereof, then the agreement "fails to express the true intent and agreement of the parties," and that accordingly, authority is found in the section referred for the introduction of parol evidence showing what the true agreement of the parties was.

We regard this contention as too broad. We do not believe it to have been the intention of the legislature to authorize the introduction of parol evidence respecting the terms of a written instrument under the circumstances set forth in the contention. Such a theory would prevent written instruments, to a considerable extent, from serving the purpose they were designed to serve and would leave them of little more value than parol agreements. If, against the objection of the vendee, properly interposed, one may, in the absence of fraud and mistake, successfully maintain, after he has executed a conveyance of real estate, that he intended, and it was verbally agreed that certain buildings on the premises, forming part of the free-hold, should be excepted or reserved from the operation of the conveyance, or that only half of the premises described in the conveyance were excepted from the terms of the conveyance, and thereby materially modify the meaning and effect of the document, written instru-

ments cease to have substantial value as such (Jones, Commentaries on Evidence (Horwitz) 485, 486, Vol. 3; Yu Tek & Co. *vs.* Gonzalez, 13 Off. Gaz. 372).

Under our Code of Civil Procedure parol evidence may be introduced to relieve from an imperfection or to correct a mistake which has prevented any real agreement from being reached, or which has occasioned the expression of that which was not the true agreement; or to attack the validity of the agreement, and for the other purposes named in the second paragraph of section 285. Where there is an imperfection or mistake in an instrument, it either does not express any agreement at all between the parties or it does not express their real agreement. Where there is no mistake or imperfection, it expresses both; and the reference in paragraph 1 of said section to the failure of the instrument "to express the true intent and agreement of the parties" refers to a mistake or imperfection by which the failure is produced.

In many cases, mistake, as such, has no legal effect. It neither adds anything to nor takes anything from the legal consequence of an act, either as regards the right of other persons or the liability of the persons performing the act. Nor does mistake of itself necessarily affect the validity of contracts. A mistake, as we have already said, may prevent any real agreement from being reached or may occasion the expression of that which was not the true agreement; but if the minds of the parties actually met on all the essentials of a contract, and the instrument which purports to evidence it is in

fact a true exposition of that contract, no amount of mistake in respect to the legal effect of the contract will induce a court, either of law or equity, to interfere. Courts, in exercising the powers of recision and reformation, do not operate upon contracts at all but merely upon what erroneously purport to be contracts. Courts will not reform a writing so as to give an agreement a different effect from that which the parties intentionally entered into simply because the contract as executed does not effect the purpose of its execution, nor insert in the instrument a part of an antecedent verbal agreement which was designedly left out of the written contract, either through ignorance of the necessity for its insertion, or because its performance was trusted to the honor of the defendant. The inquiry is not what contract the parties intended to enter into, but what is the contract they did enter into. Their intention may have been one thing, their agreement quite another. For the same reason a court of equity will not rescind a contract or reform an instrument merely because the parties may have been mistaken as to its legal interpretation and effect, nor will such a mistake be recognized as any defense to a suit upon the contract or instrument. The section under discussion cannot be construed to mean that a party may contradict or modify the terms of a written agreement which he voluntarily signed with full knowledge of its provisions.

As we have intimated, however, there are mistakes that are referred to in Sec. 285,—a mistake or imperfection. Such a mistake is one which prevents any contract actually entered into from be-

ing properly expressed. Where the instrument contains what the parties intended it should and understood that it did, it is presumed to express their intention. At least parol evidence will not be admitted to contradict or vary the terms of the instrument under such circumstances.

The only uses to which parol evidence may be put with respect to a written instrument, aside from the cases referred to, are those mentioned in the second paragraph of section 285. In the case before us it is not alleged that there was a mistake of the parties in the formulation of the conveyance or that the conveyance is imperfect, invalid or ambiguous. It is claimed, simply, that the vendors did not understand that the conveyance itself and the words used therein meant what in law they mean, and, therefore, ask that they be permitted to contradict or vary their plain meaning and effect by showing, by parol evidence, that they did not include the particular improvements which are the subject-matter of this suit. We do not believe that parol evidence is admissible under such circumstances.

We do not discuss the general rule relative to the admissibility of parol evidence in connection with written instruments, or the varied exceptions to that rule, as laid down by the courts of the United States. It is unnecessary here. The statute, with reasonable clearness, states the rule and gives the exceptions. It is not our province to do more than apply it.

In the case of Pastor *vs.* Caspar, 2 Phil. Rep. 592, the court said, page 599:

"(2) The parties made a verbal agreement which they afterwards reduced to writing. Section 285 of the Code of Civil Procedure prohibits any parol evidence as to other terms not contained in the writing. Under this section, even if there have been agreements other than those contained in the instrument and inconsistent therewith, the plaintiff could not testify to them. The plaintiff claims that this section does not prohibit evidence as to the surrounding circumstances. This is true, and the plaintiff was at the trial allowed to testify that he bought the lorchas himself in Iloilo; that he was paid $500.00 for so doing; that $20,000.00 was borrowed from the Banco Espanol Filipino for the purpose of paying for them; and as to other details. There was no intrinsic ambiguity in the contract which required explanation. When a written contract is vague and indefinite, it can be explained by showing what the surrounding circumstances were (sec. 289), but not showing by parol what the prior agreement in fact was."

(See also Icaza *vs.* Ortega, 5 Phil. Rep. 166; Sanz *vs.* Lavin Brothers, 6 Phil. Rep. 299; Testagorda *vs.* Commanding General, 6 Phil. Rep. 573; Muguruza *vs.* International Bank, 10 Phil. Rep. 346; De Guzman *vs.* Balarag, 11 Phil. Rep. 503; U. S. *vs.* Macaspac, 12 Phil. Rep. 26; Jose *vs.* Damian, 14 Phil. Rep. 104; Sy Joc Lieng *vs.* Sy Quia, 16 Phil. Rep. 137; Lozano *vs.* Tan Suico, 23 Phil. Rep. 16.)

The evidence offered on the trial to sustain the special defense should have been excluded under the objection of the plaintiff.

Evidence was introduced by the parties showing the value of the property removed by the defendant from the premises after the sale to the plaintiff. That evidence fully supports the contention of the appellant that the value was that alleged in the complaint, *vs.* P-50,000.00. In the case of Hicks *vs.* Manila Hotel Co., Vol. 12, Off. Gaz. 2253, we said:

> "It is the practice of this court, in case of reversal of a judgment dismissing the complaint on the merits, to examine the evidence and enter or order entered the judgment which the inferior court should have rendered; and, where the action is for a sum of money or damages, to find from the evidence the amount due or the damages suffered and to render or order the trial court to render judgment for that amount."

The question of damages and the amount thereof were fully ventilated in the trial court and here. We are, therefore, of the opinion that the case should be finally determined in this court.

The judgment is reversed and the cause remanded to the court of First Insurance with instructions to enter judgment in favor of the plaintiff and against the defendant in the sum of fifty thousand pesos (P-50,000.00), with interest from the commencement of the action.

After the expiration of 20 days let judgment be entered in accordance herewith, and 10 days thereafter let the case be returned to the court whence it came for execution. So ordered.

TORRES, J., and JOHNSON, J., concurred.

THE UNITED STATES OF AMERICA.

PHILIPPINE ISLANDS.

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
Plaintiff and Appellant,

versus

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, et al.,
Defendant and Appellees.

R. G. No. 7992.

I, V. ALBERT, Clerk of the Supreme Court of the Philippine Islands, hereby CERTIFY:

That the foregoing is the true and correct copy of the decision rendered by the Supreme Court of the Philippine Islands in the above-entitled case, such as the same was entered in the record of this case on the 4th day of March, A. D. 1915.

That, in preparing the transcript of the record in the above-entitled case in pursuance of the ap-

peal and writ of error taken by the defendant and appellee, to-wit: The Philippine Sugar Estates Development Company, Limited, to the Supreme Court of the United States of America against the said decision and judgment rendered in accordance thereto, through an oversight and inadvertence, the words "TORRES, J. AND JOHNSON, J., CONCURRED." were omitted from the said transcript. That said words were part of said decision and said Torres, J. and Johnson, J. concurred in the rendition of the said decision and signed the same on the same date, the same was rendered, to-wit, on the 4th day of March, A. D. 1915.

That only upon receiving the printed copy of the transcript of the record in the appeal before the Supreme Court of the United States the omission of the said words "TORRES, J. AND JOHNSON, J. CONCURRED," was noted, and thereupon the attorney for the appellant and plaintiff in error in said appeal and writ of error requested the undersigned to rectify said omission by issuing a true and correct copy of the decision rendered by the Supreme Court of the Philippine Islands in the above-entitled case.

In witness whereof, I sign these presents with my signature and affix the seal of this Supreme Court on this 28th day of February, A. D. 1917.

V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

ar.

[SEAL.]

(CORTE SUPREMA.
ISLAS FILIPINAS.)

No. 189

In the Supreme Court of the United States

OCTOBER TERM, 1917

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LTD., *Plaintiff in Error and Appellant,*

v.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, *Defendant in Error and Appellee.*

BRIEF FOR THE GOVERNMENT OF THE PHILIPPINE ISLANDS, DEFENDANT IN ERROR AND APPELLEE

PRESS OF GIBSON BROTHERS, INC., WASHINGTON, D. C.

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In the Supreme Court of the United States.

OCTOBER TERM, 1917.

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LTD., *Plaintiff in Error and Appellant,*

v.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, *Defendant in Error and Appellee.*

No. 189.

BRIEF FOR DEFENDANT IN ERROR AND APPELLEE

STATEMENT OF THE CASE

This case is here on writ of error and appeal from the Supreme Court of the Philippine Islands for the review of the judgment of that court in favor of the appellee. On December 22, 1903, the Philippine Sugar Estates Development Company, Ltd., a corporation, the plaintiff in error and appellant, by written contract agreed to sell to the Government of the Philippine Islands eight haciendas, formerly the property of the Dominican Order of Friars in the Philippines, together with all "warehouses, camarines and

other buildings, irrigation works, dams, tunnels, ditches, *and all other improvements*, together with all water and other rights and all hereditaments belonging to the Company on every part of the estates hereby agreed to be conveyed." (R., p. 4.)

On October 19, 1905, in partial compliance with said agreement, the Development Company executed a deed of sale of the Calamba Estate, one of the haciendas named in that agreement, in which it is stated that the Development Company conveyed to the Government of the Philippine Islands, "an agricultural property owned by the aforesaid corporation, styled Hacienda de Calamba, or San Juan Bautista de Calamba, situated in the District of Calamba, province of Laguna Islands, the description, area and boundaries whereof, as they appear in the title deeds of the hacienda, are as follows:" Then follows a description of the property conveyed. (R., pp. 8, 9.) In the description of the buildings and improvements affixed to the lands of this estate and conveyed thereunder and of which it is certified in the deed that the Development Company was the owner at the time of said conveyance, the deed recites:

> "In the barrio of Majada it owns the plantation house of this name, a new building of strong materials, surrounded by a large stone fence, and in the neighborhood several coffee plants, and at different places the sugar mills

> with all outbuildings and accessories named 'Mapagon,' a hydraulic mill; 'Mayapa,' a steam mill 'Calamias,' a hydraulic mill; 'Siraulupa,' a steam mill; 'Real,' a steam mill, and 'Punta,' also a steam mill; though it is believed that these mills were destroyed, in part at least, by the revolutionists. It has two large dams for the irrigation of the paddy lands, named San Juan and Campana dams, also one conduit and several irrigation canals and works reaching to the pueblo; specially the iron pipe conduit passing under the San Cristobal River, in the barrio of Calamias, which irrigates the Bantio and San Cristobal lands." (R., p. 10.)

And the deed proceeds to recite that according to the survey and measurement of the said property recently made by the engineers and surveyors of the Philippine Government, the exact description thereof is as follows: (R., p. 10.) Then follows a description of the property by metes and bounds in which no building or improvement is mentioned. It is recited also in said deed:

> "I also record that in this conveyance to the Government of the Philippine Islands, which is subrogated thereto, are included all the rights and actions which the said corporation by me represented has now, or may legally have, in and to all buildings and irrigation works, together with all water rights, town lots and

> other improvements and hereditaments existing in and on the hacienda by these presents sold, bargained and conveyed. * * *" (R., p. 11.)

The deed expressly excludes from the sale and conveyance, parcels of lands, town lots and buildings, which are referred to and excluded by the terms of the preliminary contract entered into on December 22, 1903. (R., p. 11.) The sugar mills and the railroads, which are the subject of this suit, are not included in this reservation of the property which is excluded from the sale. The deed further recites:

> "Finally, I record that it is hereby covenanted and agreed that the Government of the Philippine Islands is, from the present moment, the owner, in fee simple, of the hacienda or agricultural property referred to in this contract, free from all charge and encumbrance. * * *" (R., p. 12.)

After the celebration of the preliminary contract, and both before and after the execution of the deed of sale, the Development Company severed, took apart and removed the sugar mills claimed by the Philippine Government to have been conveyed in the deed of sale. (R., pp. 3, 32, 51, 52 and 120.)

On October 13, 1906, the Philippine Government brought suit against the Philippine Sugar Estates Development Company, Ltd., and the Orden de Dominicos or Padres Predicadores, otherwise known

as Provincia Del Santisimo Rosario De Filipinas (R., p. 1), setting up the deed of sale and the contract, reciting the unauthorized removal of the demised fixtures, alleging a damage of 50,000 pesos occasioned thereby, and prayed judgment against the defendants in the amount of the alleged damage with interest and costs. (R., p. 4.) To this bill of complaint the defendants filed an answer and two amended answers. (R., pp. 18, 19, 20.) To the last amended answer the Philippine Government interposed a demurrer on the ground that the special defense set forth in the amended answer tended to impugn or alter the contents of the deed of sale executed by the parties. (R., p. 22.) This demurrer was sustained in part but overruled in respect to so much of the answer as alleged that it was understood by the contracting parties that the contract did not include the railroad, sugar mills and accessories which are the subject of this suit (R., p. 23), to which action of the court the Philippine Government excepted. (R., p. 25.) The parties having come to an issue, the case came on for trial before the Court of First Instance of Manila on October 25, 1911. (R., p. 51.) The evidence adduced at the trial of said cause established the averment in the bill of complaint that the sugar mills mentioned therein were, by the Development Company after the execution of the preliminary contract, severed from the estate, taken apart and removed

from said estate, and that the value of the said mills claimed by the Philippine Government, and which were removed from said estate by the Development Company after the execution of said contract, was 50,000 pesos. (R., pp. 4, 8, 32, 51–67, 125.)

In the trial before the Court of First Instance, the Development Company sought, by parol evidence, to contradict and vary the plain terms of the written agreement and deed of conveyance, by attempting to show there had been a verbal understanding between the parties that the said sugar mills and railroad should not be included therein. (R., pp. 44, 72, 86.) This parol evidence was admitted over the objection of the Philippine Government, to which action of the court exceptions were taken. (R., p. 71, 72, 73, 74, 76.) The Court of First Instance, upon consideration of the parol evidence, held that it showed there had been an agreement between the parties that the said sugar mills should not be included in the written agreement and in the deed of sale, and thereupon acquitted the Philippine Sugar Estates Development Company from the complaint without express ruling on the costs. (R., p. 101.) To this decision the Philippine Government excepted and announced its intention to file a bill of exceptions and at the same time asked that a new trial be granted on the ground that the evidence did not justify the decision of the court and that the same was contrary

to law. (R., p. 102.) The court overruled the motion for a new trial, whereupon the Philippine Government filed its bill of exceptions and appealed the judgment to the Supreme Court of the Philippines. (R., p. 104.) The Supreme Court of the Philippines held that the parol evidence was inadmissible to vary the terms of the written contract and reversed the judgment, and finding that the evidence supported the allegation of the complaint, remanded the case to the Court of First Instance, with instructions to enter judgment in favor of the plaintiff against the defendant in the sum of 50,000 pesos, with interest from the commencement of the action. The court said:

> "The evidence offered on the trial to sustain the special defense should have been excluded under the objection of the plaintiff.
>
> "Evidence was introduced by the parties showing the value of the property removed by the defendant from the premises after the sale to the plaintiff. That evidence fully supports the contention of the appellant that the value was that alleged in the complaint, viz., ₱50,000,00. In the case of *Hicks* v. *Manila Hotel Co.*, Vol. 12, Off. Gaz. 2253, we said:
>
> > " 'It is the practice of this court, in case of reversal of a judgment dismissing the complaint on the merits, to examine the evidence and enter or order entered the

judgment which the inferior court should have rendered; and, where the action is for a sum of money or damages, to find from the evidence the amount due or the damages suffered and to render or order the trial court to render judgment for that amount.'

"The question of damages and the amount thereof were fully ventilated in the trial court and here. We are, therefore, of the opinion that the case should be finally determined in this court.

"The judgment is reversed and the cause remanded to the Court of First Instance with instructions to enter judgment in favor of the plaintiff and against the defendant in the sum of fifty thousand pesos (₱50,000.00), with interest from the commencement of the action." (R., p. 125.)

ARGUMENT

I.

Parol evidence is not admissible to vary the terms of the preliminary contract of sale and deed of conveyance.

The first five assignments of error, when grouped, present the single question whether, under the Philippine Code, parol evidence is admissible to vary the terms of a written instrument. The special defense set up in the amended answer and to which the evidence is addressed is that:

"* * * It was understood by the contracting parties that the contract did not in-

> clude the above mentioned railroad, sugar mills and accessories which are now claimed, and though in said instrument use is made of the words 'and all other improvements and accessories which exist on the Hacienda' as included in the sale, it was understood by the contracting parties that under such general terms, the said railroad, sugar mills and other accessories were not to be considered included in the sale, nor was it the intention of the parties to include them." (R., p. 21.)

The plaintiff in error evidently proceeded upon the theory that it was permitted to make this defense and to introduce evidence in its support by virtue of the provisions of Section 285 of the Code of Civil Procedure of the Philippine Islands, which provides as follows:

> "*Written agreement presumed to contain all the terms of the agreement.*—When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be, between the parties and their representatives or successors in interest, no evidence of the terms of agreement other than the contents of the writing, except in the following cases:
>
> "(1) Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, is put in issue by the pleadings;

> "(2) Where the validity of the agreement is the fact in dispute. But this section does not exclude other evidence of the circumstances under which the agreement was made, or to which it relates, or to explain an intrinsic ambiguity, or to establish its illegality or fraud. The term 'agreement' includes deeds and instruments conveying real estate, and wills as well as contracts between parties."

There is no claim by the plaintiff in error that a mistake had been made in the drafting or the execution of the instrument or that there was any imperfection or incompleteness in the instrument itself. Neither is it claimed that it was not the intention of the parties to use the words employed in the contract and the deed, but the plaintiff in error attempts to justify the introduction of parol evidence to vary the terms of the written contract upon the sole ground it was the understanding of the parties that the contract did not include the sugar mills and railroad and therefore the terms thereof did not express the true intention of the parties.

The position taken by the plaintiff in error, therefore, is that, notwithstanding the plain terms of the agreement, which is couched in the language that the parties intended to employ, and which, in fact, conveyed the property in question, the agreement may nevertheless be modified and varied by parol testimony.

The question presented, therefore, is whether, in the absence of mistake in the terms of the contract or imperfection therein or any ambiguity in respect thereto, and although the contract said what the parties intended it to say, evidence may be introduced to show that the understanding of the parties was in fact different from that expressed in the instrument.

Plainly, a written instrument would cease to have any substantial value as such if it could be shown that a person who has executed a conveyance of real estate could thereafter show that it was verbally agreed that certain buildings on the premises, described in the conveyance as passing thereunder, should be excepted or reserved from the operation of the conveyance. This is precisely what plaintiff in error claims it should be permitted to show, and what was allowed to be done by the Court of First Instance, whose action in so doing was reversed by the Supreme Court of the Philippines. To permit the introduction of parol testimony to show this would be a flagrant violation of the rule firmly established in the law that parol evidence is inadmissible to vary the terms of a written contract.

In *Gavinzel* v. *Crump* (22 Wall., p. 319), this court said:

> "* * * There is no occasion to introduce parol evidence to explain anything in the contract, because there is no ambiguity about it,

> and it is not competent by this sort of evidence to alter the terms of a contract by showing that there was an antecedent parol agreement or understanding between the parties different in a material particular from that which the contract contained. * * *"

In *Falk* v. *Moebs* (127 U. S. 597), the facts were that the note sued on was drawn by and payable to, and indorsed by, a corporation without ambiguity in the indorsement. This court, in holding that evidence was not admissible to show that it was the intention of the indorser in making the indorsement to bind himself personally, said:

> "We conclude, therefore, that the notes involved in this controversy, upon their face, are the notes of the corporation. In the language of the court below, they were 'drawn by, payable to, and indorsed by,' the corporation. There is no ambiguity in the indorsement, but, on the contrary, such indorsement is, *in terms*, that of the Peninsular Cigar Company. *
>
> "This being true, it follows that the court below was right in excluding from the jury the evidence offered to explain away and modify the terms of such an indorsement."

This case is peculiarly pertinent to the instant case in that an attempt is here made to show that, notwithstanding the deed conveyed the property in controversy, it was the intention of the parties

that it should be reserved and excepted from the operation of the deed of conveyance.

In *Martin* v. *Cole* (104 U. S. 30), this court held inadmissible evidence of a contemporaneous parol agreement that an indorsement was without recourse. In *Waldon* v. *Skinner* (101 U. S. 585), in considering the question of the admissibility of parol evidence, this court said:

> "When the deed or other written instrument is duly executed and delivered, the courts of law hold that it contains the true agreement of the parties, and that the writing furnishes better evidence of the sense of the parties than any that can be supplied by parol. * * *"

In *Bailey* v. *Realty* (17 Wall. 105), it was held that evidence was inadmissible to show what the understanding of the parties was in respect to the meaning of a contract. In *Moran* v. *Prather* (23 Wall. 501), this court said:

> "Where the words of any written instrument are free from ambiguity in themselves, and where the external circumstances do not create any doubt or difficulty as to the proper application of the words to the claimants under the instrument, or the subject-matter to which the instrument relates, such an instrument, said Tindal, C. J., is always to be construed

according to the strict, plain, common meaning of the words themselves, and that in such cases evidence *dehors* the instrument for the purpose of explaining it, according to the surmised or alleged invention of the parties to the instrument, is utterly inadmissible.

"All the facts and circumstances may be taken into consideration, if the language be doubtful, to enable the court to arrive at the real intention of the parties, and to make a correct application of the words of the contract to the subject-matter and the objects professed to be described, for the law concedes to the court the same light and information that the parties enjoyed, so far as the same can be collected from the language employed, the subject-matter, and the surrounding facts and circumstances.

"Ambiguous words or phrases may be reasonably construed to effect the intention of the parties, but the province of construction, except when technical terms are employed, can never extend beyond the language employed, the subject-matter, and the surrounding circumstances."

The rule excluding parol or extrinsic evidence relating to written instruments is, in the absence of fraud or mistake, applicable to a court of equity as well as in a court of law. *Willard* v. *Taylor* (8 Wall. 557); *Hunt* v. *Rousmanier* (8 Wheat. 174); *Sprigg* v. *Bank* (14 Pet. 201); *Hendrickson* v. *Hinckley* (17 How. 443).

Therefore, it is settled beyond dispute by an unbroken line of decisions of this court that, except in the case of fraud or mistake, parol evidence is not admissible either in a court of law or in a court of equity to vary the terms of a written instrument. In the case at bar neither fraud nor mistake is alleged to have been present.

II.

The provisions of Section 285 of the Philippine Civil Code are but the application of the recognized principle that the terms of a contract made in writing cannot be altered, varied or impugned by parol evidence, unless because of mistake or fraud the true intent or agreement of the parties is not expressed.

This is the reasonable interpretation of the section under review, and not the interpretation the plaintiff in error seeks to place upon it. The plaintiff in error contends, and is forced by the exigencies of its case so to contend, that the clause, "or its failure to express the true intent and agreement of the parties," appearing in the paragraph "where a mistake or imperfection of the writing or its failure to express the true intent of the parties is put in issue," authorizes the introduction of parol evidence to show an understanding or intention of the parties in contradiction of the plain terms of the agreement. It is obvious that the clause, "or its failure to express the true intent and agreement of the parties," introduced no

substantial modification in the terms of the provisions of Section 285 as to admitting parol evidence, tending to modify or vary the terms of a written instrument, but it is merely a clause explanatory of the first part of the same paragraph which permits the introduction of parol evidence where a mistake or imperfection of the writing is put in issue and inserted doubtless clearly to show that if the true intent is not expressed because of some mistake or imperfection parol evidence may be introduced to show the mistake or imperfection. For if there be a mistake in the drafting of the contract, or if it be imperfect or incomplete, the contract would not express the true intent of the parties. It cannot mean that where the written instrument clearly and perfectly expresses in apt language a certain intent, that parol evidence may be admitted to show the parties understood that something else was intended.

If this were true, all written instruments as repositories of the terms of an agreement, would be useless. Such an interpretation would render entirely useless and ineffective the provisions of said Section 285 that

> "When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms and therefore there can be no evidence of the terms of agreement other than the contents of the writing."

Indeed, it is unthinkable that it was the intention of the Philippine Legislature that the clause in question should be susceptible of the meaning ascribed to it by the plaintiff in error.

III.

The construction contended for by the defendant in error and appellee is the interpretation which has been uniformly placed upon Section 285 by the Supreme Court of the Philippines.

The statute before this court for interpretation is a matter of purely local concern, and the local understanding of its meaning should not be disturbed.

> "We should not decide against the local understanding of a matter of purely local concern unless we thought it clearly wrong, instead of thinking it, as we do, plainly right." (*Sante Fe Ry. Co.* v. *Friday*, 232 U. S. 694.)

In the case of *Gauzon* v. *Compania General de Tabacos de Filipinas*, decided November 5, 1917, U. S. Adv. Ops. 1917, page 45, this court, in reviewing a judgment of the Supreme Court of the Philippine Islands, said:

> "We are not disposed to disturb this judgment of the Supreme Court construing local laws and announcing a rule applicable in the Islands."

This rule, enunciated by this court in repeated decisions, is especially applicable to the case at bar.

The construction contended for by the defendant in error is the interpretation placed upon said Section 285 by the Supreme Court of the Philippines in an unbroken line of decisions.

In *Pastor* v. *Gaspar et al* (2 Phil. R. 592), the court, in considering the question of the admissibility of parol evidence under said Section 285 to vary the terms of a written instrument, said:

> "The parties made a verbal agreement which they afterwards reduced to writing. Section 285 of the Code of Civil Procedure prohibits any parol evidence as to other terms not contained in the writing. Under this section, even if there had been agreements other than those contained in the instrument and inconsistent therewith, the plaintiff could not testify to them. The plaintiff claims that this section does not prohibit evidence as to the surrounding circumstances. This is true, and the plaintiff was at the trial allowed to testify that he bought the lorchas himself in Iloilo; that he was paid $500 for so doing; that $20,000 was borrowed from the Banco Espanol Filipino for the purpose of paying for them; and as to other details. There was no intrinsic ambiguity in the contract which required explanation. When a written contract is vague and indefinite, it can be explained by showing what the surrounding circumstances were (sec. 289), but not by showing by parol what the prior agreement in fact was."

By this decision the court lays down the well-known rule that parol evidence is not admissible to vary the terms of a written instrument and that where there is no ambiguity in the contract, no explanation is required, and, therefore, parol evidence of surrounding circumstances is not admissible to show the intention of the parties.

In *Eveland* v. *Eastern Mining Company* (14 Phil. R. 509), the court, having under review the question as to the admissibility of parol evidence to vary the terms of a written contract, said:

> "* * * There was an attempt during the trial of the case to vary the terms of this contract, and while the court admitted much evidence which tended to vary the terms of the said contract, yet the court in its decision, in accordance with Section 285 of the Code of Procedure in Civil Actions, held that such evidence should not be allowed to have the effect of varying the terms of the said contract."

The very question here presented was before the Philippine Supreme Court in the case of *Yu Tek & Co.* v. *Gonzalez* (29 Phil. R. 385), where there was a written contract which provided for the sale of a certain amount of sugar by the defendant to the plaintiff. The defendant sought to prove by parol evidence that it was the understanding that the sugar was to be procured from its growing crop. The court, in holding that the evidence was inadmissible, said:

> "There is not the slightest intimation in the contract that the sugar was to be *raised* by the defendant. Parties are presumed to have reduced to writing all the essential conditions of their contract. While parol evidence is admissible in a variety of ways to explain the meaning of written contracts, it cannot serve the purpose of incorporating into the contract additional contemporaneous conditions which are not mentioned at all in the writing, unless there has been fraud or mistake. * * *"

In *Azarraga* v. *Rodriguez* (9 Phil. R. 637), the court said:

> "Of the two exceptions taken by the defendant to the claim of the creditor the first consists in that, according to his own opinion, said obligation is a conditional one. Such an allegation cannot be admitted under the law because in said document of indebtedness accepted by Rodriguez, no condition whatever is present, not even that which is pretended in the answer, and since the terms of the obligation due on a fixed date are clear, the plain meaning of the wording of said document must be abided by, as it would not be lawful to consider as included therein things and conditions other than such as were intended by the parties concerned when executing the contract, and which appear therein."

In *De Lizardi* v. *Yaptico* (30 Phil. R. 211), the court cited with approval the extract quoted from the opinion of *Azarraga* v. *Rodriguez, supra.*

Upon the same point and sustaining the position of the appellee, see also *De Icaza* v. *Perez y Ortega* (5 Phil. R. 166); *Testagorda* v. *Commanding General* (6 Phil. R. 573); *Muguruza* v. *International Bank* (10 Phil. R. 346); *De Guzman* v. *Balarag* (11 Phil. R. 503); *José* v. *Damian* (14 Phil. R. 104); *Sy Joc Lieng et al.* v. *Sy Quia et al.* (16 Phil. R. 137); *Lozano* v. *Suico* (23 Phil. R. 16).

The interpretation placed upon Section 285 by the court below in the present case is supported by all the decisions of the Supreme Court of the Philippines where this section has been the subject of interpretation.

No ambiguity appearing in the agreement and deed of sale, the intention of the parties is to be gathered from the writing alone.

The language employed by the parties in making the instrument and no other must be used in ascertaining its meaning. *Home Insurance Co.* v. *Baltimore Warehouse Company* (93 U. S. 527); *Falk* v. *Moebs* (127 U. S. 597); *West* v. *Smith* (101 U. S. 263); *Morgan* v. *Prather* (23 Wall. 492); *United States* v. *Fossat* (20 How. 413).

Manifestly to admit parol evidence to modify and vary the terms of a written instrument would be to

violate the principle enunciated in the foregoing cases, and the effect of such evidence would be to substitute another and different contract for the one agreed upon and reduced to writing by the parties.

The section of the Code of Civil Procedure of the Philippines under consideration has been taken almost verbatim from Section 1856 of the Code of Civil Procedure of California and the interpretation of the California law by the California courts illumines the question here presented.

The only variation appears in the second paragraph of the California Code, which says: "Where a mistake or imperfection of the writing is put in issue by the pleadings;" while the pertinent part of said Section 285 says: "Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, is in issue." The clause "or its failure to express the true intent and agreement of the parties," however, is in consonance with Section 1640 of the Civil Code of California, which provides:

> "When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded."

The two sections present a striking similarity in language and the thought expressed and the meaning

of each is the same. Obviously, both mean that if by reason of fraud or mistake the true intention of the parties is *not* expressed, then parol evidence is admissible. In the absence of either, such evidence is not admissible. It cannot be believed it was the intention of the Philippine Legislature in copying this provision from the Code of California to separate it from the principle adopted in the California code, as expressed by the California courts. It must be assumed, therefore, that the Legislature of the Philippines intended that this provision should express the same meaning as that of the California Code as interpreted by the decisions of the California Courts, in the light of which the provision was enacted. Accordingly, the meaning of this provision of the Philippine Code receives positive light from the decisions of the California courts interpreting the provision of the California law from which was evidently copied the provision which is the subject of construction. These decisions set at rest, we submit, beyond dispute the question here presented.

In *Guy* v. *Bibend* (11 Cal. 323), it was sought to introduce parol evidence that the note in suit could be payable only out of the surplus arising from the sale of certain goods assigned to the payor as security for the debt due him. The court, in refusing to admit the evidence, said:

> "The facts averred in the answer show a contract or understanding, made contemporaneously with the note, that it should be payable only out of a particular fund, to-wit: the surplus arising from assets received from Segener & Schoenbar, after paying the debt due to the defendant. This defense cannot be maintained. To do so would be to vary or add to the terms of the written contract by parol. * * *"

It is observed in that case, as in the present case, it was sought to introduce parol evidence of an "understanding" modifying the terms of the written instrument.

In *Jungerman* v. *Bovee*, 19 Calif. 263, the court, having under construction a lease in which it was sought to introduce evidence that there was a contemporaneous agreement that the tenant upon the expiration of the lease would have the right to remove the buildings on the property, in holding that parol evidence was inadmissible, said:

> "* * * This license is sought to be proved by evidence of a contemporaneous oral agreement or understanding that the tenant should have the right to remove the buildings. Even if, as against an assignee of the lease, this agreement could, in any event, be effectual, it seems clear to us that such proof would be inadmissible under the cir-

> cumstances of this case, because contravening the rule that contemporaneous parol agreement cannot be received to contradict a written contract; and this rule applies as well to agreements of this sort, from which a license is implied, as to any other. * * *"

In *Bryan* v. *Idaho Quartz Min. Co.* (73 Cal. 859), the court said:

> "The contract being perfectly clear, and the action being in affirmance of the contract, the court below was right in rejecting the parol evidence of prior conversations, and as to what was understood, etc. * * *"

It is to be noted in that case there was sought to be done exactly what was attempted in the case at bar.

In *Ward* v. *McNaughton* (43 Cal. 159), which was an action to foreclose a mortgage on certain real estate to secure a promissory note made by certain of the defendants to the plaintiff, the answer set up as a defense that at the time of the purchase it was verbally agreed between plaintiff and defendants as a part of the same transaction, and for the same consideration, that the defendant would perfect his preemption claim to certain other lands and obtain a patent therefor, and on obtaining the patent would convey to the defendants said other lands without any other or further consideration therefor; that the plaintiff, in part execution of the verbal agreement,

conveyed to the defendants the lands described in the mortgage, but, in violation of his contract, abandoned his preemption claim to the other land and had never perfected the same, or conveyed the lands to the defendants. The lower court sustained a demurrer to the answers and in affirming the judgment, the court said:

> "The offer was to show that in addition to the lands which the plaintiff actually conveyed to the defendants, he, at the same time and by the same contract, also agreed verbally to convey to them other lands for the same consideration recited in his deed, and to secure which the mortgage was made. I think it is clear that the defendants are precluded from setting up a verbal agreement of that character. When a negotiation for the purchase and sale of real estate culminates in a deed from the vendor to the vendee, reciting the whole consideration agreed to be paid, and in a mortgage from the vendee to the vendor on the land conveyed to secure the purchase money, it would lead to great frauds and abuses if the vendee were permitted to show by parol that the vendor also agreed to sell and convey other lands not included in the deed. It would open the door to all the evils which the Statute of Frauds was intended to prevent, and would be to vary and enlarge by parol the contract of sale expressed in the deed, which must be held to embody the result of the negotiation between the parties."

In *Hawkins* v. *Hawkins* (50 Cal. 558), the court held that if a person enters into a contract with another, between whom and himself no relation of especial trust or confidence exists and it is reduced to writing by such other person, and the means of a knowledge of the terms of the writing are equally open to both and he signs it without reading or having it read to him by someone for him, he cannot avoid a liability created by the writing even if its terms differ from the contract as agreed on verbally.

In the case of *Hudson* v. *Varney* (122 Cal. 619), the facts of which bear a striking resemblance to those in the case at bar, here, too, it was sought to introduce parol evidence to show that in the sale of a photograph gallery certain lens and cameras were reserved. In holding that the lower court was right in refusing to admit this testimony, the court said:

> "* * * Under objection from defendant, plaintiff offered oral evidence to show that this instrument was reserved from the sale. In the face of the written contract, which in direct and explicit language declared that title to all the property in the gallery passed to defendant and which also declared that 'all cameras therein contained' passed to defendant, this evidence was clearly inadmissible. The offer of such evidence was a bald attempt to vary and contradict the terms of a written contract, and principles of elementary law forbid it

> being done. * * * The writing in such a case contains no exception or reservation, and the writing must be held to contain all the terms of the contract. Oral evidence of reservations or exceptions of certain property from the effect of the bill of sale presented in this case should have been rejected by the trial court. * * *"

This case, it is submitted, is precisely in point on the question here presented. Thus, under the California law, which, with slight changes, is embodied in Section 285 of the Philippine Code, the California courts have uniformly held that parol evidence was inadmissible to modify or vary the terms of a written instrument.

It is a well settled rule of construction that language used in a statute which has a settled and well known meaning, sanctioned by judicial decision, is presumed to be used in that sense by the legislative body. *Kepner* v. *U. S.*, 195 U. S. 125.

It is submitted, therefore, in adopting the provisions of the California law it was the evident purpose of the Philippine Legislature that the provision thus carried into the Philippine law should be taken and considered as having the meaning which the California courts had ascribed to it.

IV.

The minds of the parties met and the terms of the agreement were reduced to writing, and as the instrument is an expression of what the parties intended to say, a mis-

take in respect to the legal effect of the contract will not induce a court to interfere.

If the legal effect of the contract is to convey the property in controversy, parol evidence is not admissible to show that the parties intended to use the words in a different sense and that if so used they would not have the effect of conveying the property.

> "If the words employed have an established legal meaning, parol evidence that the parties intended to use them in a different sense will be rejected, unless, if interpreted according to their legal acceptation, they would be insensible with reference to the context or the extrinsic facts. * * * In no case can it be received where it is inconsistent with, or repugnant to, the contract. Otherwise it would not explain, but contradict and change, the contract which the parties have made. * * *" (*Hearne* v. *Marine Insurance Company*, 20 Wall. 492.)

It is not permitted to show that the intention of the parties was different from that expressed in the instrument, except where the language is ambiguous. *Home Insurance Co.* v. *Baltimore Warehouse Co.* (93 U. S. 527); *Falk* v. *Mobbs* (127 U. S. 597). In *Faw* v. *Marsteller* (2 Cranch. 629), this court said:

> "The rule which forbids a deed to be contradicted or explained by parol testimony is a salutary one, and the court is not disposed to impair it. * * *"

In *Assurance Co.* v. *Building Association* (183 U. S. 318), considering the question of the admissibility of parol testimony, this court said:

> "It is a fundamental rule of courts, both of law and of equity, that parol contemporaneous evidence is inadmissible to contradict or vary the terms of a valid written instrument. This rule is thus expressed in Greenleaf on Evidence, Vol. 1, section 275, 12th edition:
>
> "When parties have deliberately put their engagements into writing, in such terms as to import a legal obligation without any uncertainty as to the object or extent of such engagement, it is conclusively presumed that the whole engagement of the parties, and the extent and manner of their undertaking, was reduced to writing; and all oral testimony of a previous *colloquium* between the parties, or of conversation or declarations at the time when it was completed, or afterwards, as it would tend in many instances to substitute a new and different contract for the one which was really agreed upon, to the prejudice, possibly, of one of the parties, is rejected. * * *"

It is believed that no useful purpose would be served, and as it would prolong unnecessarily the discussion of this phase of the case to review the many cases cited by plaintiff in error, we therefore refrain from

doing so. Suffice it to say it is significant the plaintiff in error has not pointed to any decision of the Philippine or California courts, or the courts of any other jurisdiction, in which it has been permitted, in the absence of fraud or mistake or ambiguity, to contradict a written instrument by parol testimony.

The plaintiff in error, driven from its position that parol evidence is admissible under Section 285 of the Philippine Code, to vary the terms of a written instrument, by the interpretation placed upon the provision by the Philippine courts and the decisions of the California courts interpreting a similar statute and also by the general rule of law applicable to the subject, now seeks on page 15 of its brief to call to its aid and apply what it terms an equitable principle of the law to this case and thereupon proceeds to argue that the case falls within the jurisdiction of equity. In making this contention the plaintiff in error impliedly admits that under the construction of which the clause in question is reasonably and naturally susceptible, the parol evidence offered by it was not admissible. Claiming, however, that the case was one cognizable in equity, plaintiff in error seems to urge for that reason that the scope of Section 285 should be enlarged and there should be read into it a meaning which it does not contain. Seemingly, it forgets that the provision under consideration is the

law and the whole law in the Philippines upon the subject of the admissibility of parol evidence and that its right to introduce parol evidence in the case at bar was necessarily limited by the terms of this provision. But appellant has fallen into error. This, however, is not a suit in equity, but an action at law to recover the value of property which had been sold by the appellant to the appellee, which the appellee paid for and which the appellant, after the date of the contract of sale, removed from the lands on which it had been located. The judgment recovered was a money judgment.

The remedy at law was plain and adequate, and under no permissible view can it be said that the case is cognizable in a court of equity.

Moreover, admitting for the sake of argument that the case is one falling within equity jurisdiction and should be decided upon equitable principles, the position of the plaintiff in error would in nowise be improved. It is not claimed that there was any mistake or fraud or other ground for invoking equitable relief. In the absence of these a court of equity will not interfere. *Willard* v. *Tayloe* (8 Wall. 557); *Hunt* v. *Rousmanier* (8 Wheat. 174); *Sprigg* v. *Bank* (14 Pet. 201); *Hendrickson* v. *Hinckley* (17 How. 443); *supra*.

The case in the last analysis presents the plain question: Is parol evidence admissible to vary and contradict the terms of a written instrument?

V.

The property which is the subject of this controversy was included in the sale of the estates.

In the preliminary contract executed on December 22, 1903, it is provided that the sale of the estates in question shall include all

> "Dwelling houses, farmhouses, warehouses, camarines, and other buildings, irrigation works, dams, tunnels, ditches, and other improvements, together with all water and other rights, and all hereditaments belonging to the company on every part of the estates hereby agreed to be conveyed, except * * *"

Then follows certain reservations of property from the provisions of the agreement, but these reservations do not include the mills in controversy. And in the deed of conveyance, executed on October 19, 1905, it is definitely stated that:

> "In the barrio of Majada it owns the plantation house of this name, a new building of strong materials, surrounded by a large stone fence, and in the neighborhood several coffee plants, and at different places the sugar mills with all outbuildings and accessories, named 'Mapagon,' a hydraulic mill; 'Mayapa,' a steam mill; 'Calamias,' a hydraulic mill; 'Sirauglupa,' a steam mill; 'Real,' a steam mill, and 'Punta,' also a steam mill; though it is believed that these mills were destroyed in part at least by the revolutionists. * * *"

It is contended by the plaintiff in error on page 40 of its brief that this provision of the deed must be taken as a mere narrative and not as an integral part of the contract, because the deed proceeds to give, according to a recent survey, a description of the estates by metes and bounds, but without mentioning any building or improvement thereon. Surely it cannot be contended that it was intended by this description of the area that the bare land only and not the buildings and improvements thereon should pass under the deeds. Neither can it be said that the subsequent description of the estates by metes and bounds served as a limitation upon or a negation of the preceding provision of the deed that there was then on the estate which was being conveyed and owned by appellant the mills in controversy.

It is also provided in the said deed that

> "are included all the rights and actions which the said corporation by me represented has now, or may legally have, in and to all buildings and irrigation works, together with all water rights, town houses and other improvements and hereditaments existing in and on the hacienda by these presents sold, bargained and conveyed."

It is also provided in the said deed that

> "It is hereby covenanted and agreed that the Government of the Philippine Islands is, from the present moment, the owner, in fee

> simple, of the hacienda and all property referred to in this deed, free from all charge and encumbrance. * * *"

It is seen, therefore, that in the deed of conveyance plaintiff in error certified it was then the owner of the mills in controversy; that they were located on the estate, and in plain terms included them in the conveyance. Not only are they included by specific mention in the deed, but they are likewise included in the expression appearing in the preliminary agreement as well as the deed of conveyance "and other improvements" on the estate. The legal effect of this term appearing in the instruments was to convey the property in controversy. And this has been so held by the decisions of the Supreme Court of the Philippines.

In *Fernandez* v. *Shearer* (19 Phil. R. 75), the question presented was whether sugar mills were improvements within the contemplation of the assessment law which provided that the appellant should proceed to assess the value of each separate part of real estate and *improvements thereon*, the court said:

> "As to the first proposition there can be no question. The mills erected upon the property for the purpose mentioned are clearly improvements upon the property."

In *Bischoff* v. *Pomar et al.* (12 Phil. R. 690), it was held that a mortgage given upon real estate includes and

constitutes a lien upon sugar mills *and other improvements* fixed to and forming part of the lands at the time the mortgage was given.

As reflecting the intention of the parties concerning the question here presented it is significant that the reservations in the preliminary agreement and the deed of conveyance do not refer to the mills in controversy. Had it been the intention of the parties to except the mills from the provisions of the contract this intention would have been clearly stated.

The conclusion is irresistible that by the terms of the preliminary agreement and deed of conveyance the mills in controversy were unquestionably included in the sale.

VI.

The parol evidence offered by the plaintiff in error, even if admissible, does not support its contention that it was the intention of the parties that the mills in controversy were to be excluded from the provisions of the deed of conveyance.

It is true that the president of the Development Company testified that he made certain corrections in a copy of the preliminary agreement, and that he struck out the words "sugar and rice mills" and that in the agreement signed these words were omitted, but it is significant that the words "all other improvements" remained therein. It is fair to assume that

after he presented the agreement for the signature of the Philippine Government, and upon its consideration, it was then deemed by the parties that the mills were included in the term "all other improvements thereon." That this is true, is indicated by his statement in the interview with the governor of the Philippines (R. 48), shortly before the execution of the final deed, in which he said that the company had no sugar mills. He did not then assert the claim that the mills were not included in the preliminary contract, but objected solely to their inclusion in the deed upon the ground that there were no mills. It is apparent that this contention was rejected by the persons representing the Philippine Government in the execution of the contract, and that, notwithstanding this statement, they refused to modify the terms of the deed so as to exclude the mills from its operation. The deed, as an examination of it shows, will disclose not the slightest modification. Indeed, as pointed out, the deed of conveyance specifies the mills as then being owned by the appellant, and states: "though it is believed that these mills were destroyed in part at least by the revolutionists." This latter clause was inserted, no doubt, as a saving clause to indicate that it was not represented that the mills were in a good state of repair. Upon this phase of the case attention is invited to the concurring opinion of Judge Carson, who, upon a consideration of the parol

evidence, found that the evidence did not support the contention of the plaintiff in error. He said:

> "I have carefully examined that evidence (meaning parol evidence) and am satisfied that it does not support their contention (meaning appellant), as to the 'true intent and agreement of the parties.' On the contrary, I think it is clearly disclosed that these other contentions as to the meaning of the language used in the contract then about to be executed, in order to give it the meaning now claimed for it, was deliberately rejected by those charged with the execution of the contract on behalf of the government, and that, notwithstanding this refusal to modify the language of the final draft of the contract so as to give it the meaning and effect now claimed for it, the defendants there and then went forward with the proceedings, and with full knowledge of its terms solemnly executed it. Under the circumstances I do not think defendants can be heard now to claim that the true meaning and intent of the contract as executed by them is any other than that which was given to it (as their own evidence clearly disclosed) by both parties at time when it was finally executed." (R., p. 125.)

VII.

The 6th, 7th and 8th assignments of error are wholly unsubstantial and frivolous.

(*a*) The 6th assignment is based upon the ground of an alleged erroneous holding by the court that the plaintiff in error was the owner of the mills in controversy on December 22, 1903. (R., p. 146.)

The question after all is, Were the mills included in the agreement? If they were, then the question whether the Development Company owned them at the time of the execution of the preliminary contract becomes immaterial. They formed a part of the consideration for which the defendant in error agreed to pay the sum stipulated, and the amount paid for the estates was necessarily based upon this item as a part of the property purchased. In point of fact, however, the plaintiff in error was then the owner of the mills and there is no evidence in the record which would lead to a contrary conclusion. Indeed, it is difficult, in view of the record, to understand upon what supposed evidence plaintiff in error predicates its contention that it was not then the owner of these mills. It is true, the president of the Development Company testified that in the spring of 1903 he entered into a verbal agreement on behalf of the Company to sell the mills, mentioning, however, no consideration, which agreement, he asserted, was by mutual consent subsequently rescinded. (R., pp. 75, 76.) There is not the slightest suggestion in the record that the alleged agreement was ever attempted to be executed. The plaintiff in error removed the

mills in question from the land and stored the machinery in its own camarin, where it was subsequently found by the defendant in error.

(*b*) In the 7th assignment the plaintiff in error assigns as error a supposed finding of the court that at the time of the execution of the deed of sale of the Calamba estate on October 19, 1905, plaintiff in error possessed within the said estate the sugar mills in question. (R., p. 146.)

The court did not find as a fact that this property was on the estate at the date of execution of the deed of conveyance, nor was it necessary so to find to establish the right of the defendant in error to recover. In the complaint it was alleged that between the date of the execution of the preliminary agreement, December 22, 1903, and the date of the execution of the deed of conveyance, October 19, 1905, plaintiff in error dismantled, took apart, and removed from the estate, the various mills described in the complaint. (R., 52, 67.) The record discloses that the evidence fully supported this allegation in the bill. The preliminary contract specifically stated that all improvements upon the estate should be included and the deed of conveyance in terms certified that the Company was then the owner of the mills, although partially destroyed, and that these mills were on the estate.

(c) In the 8th assignment, error is assigned upon the supposed finding of the court that the mill "Real" had been located within said estate. (R., 146.) There is no specific finding by the court upon the question of the ownership of the mill "Real," nor was it necessary that there should have been a finding upon this question. The record discloses that no portion of the machinery of the mill "Real" formed a part of the machinery which was appraised and valued by appellee's witness. As the machinery of this mill did not form a part of the machinery which the court below found from the evidence was of the value of 50,000 pesos, and therefore not an element considered by the court in determining the value of the property removed from the estate by appellant, any finding by the court that this mill was included in the sale would be unimportant and immaterial. The court did not make any finding upon this and was not called upon so to do. What the court actually found was that the machinery which was a part of the mills included in the sale, and which had been taken from the estate and stored in a certain camarin by the plaintiff in error, was of the value of 50,000 pesos. It did not attempt to adjudicate the question of the title to any machinery or mill other than that appraised by the witness Taylor.

The foregoing assignments raise merely issues of fact. The decision by the court below upon the issues of fact

will not be disturbed by this court on the writ of error, which is the proper method by which to review the judgment in this case, it not being a suit in equity.

"A writ of error is a general method of bringing cases to this court, an appeal the exception, confined to equity in the main." *Carino* v. *Insular Government*, 212 U. S. 449. See also *Ormsby* v. *Webb*, 144 U. S. 47; *Campbell* v. *Porter*, 144 U. S. 478; *Tiglao* v. *Philippine Islands*, 215 U. S. 410; *Jover y Costas* v. *Philippine Islands*, 221 U. S. 623; *Gauzon* v. *Compania General De Tabacos De Filipinas*, U. S. Adv. Ops. 1917, page 44.

"Upon such writ (the writ of error), the case having been decided upon the issues of fact, this court will not reconsider the conclusions of the lower court, which finds support in the record, in reaching its judgment." (*Gauzon* v. *Compania General De Tabacos De Filipinas, supra.*)

It is well settled that upon a writ of error this court will review only errors of law. *Dower* v. *Richards*, 151 U. S. 658; *Elliott* v. *Zoeffner*, 187 U. S. 327; *Grell* v. *Insular Collectors of Customs*, 239 U. S. 93.

VIII.

The evidence in the record fully supports the finding of the Supreme Court of the Philippines, that the machinery removed from the estate after the contract of sale was of the value of fifty thousand pesos.

In the 9th assignment, the plaintiff in error contends there was no relevant evidence in the record to support the finding that the value of the machinery was fifty thousand pesos. We submit that, in the light of the record, the error assigned is entirely unsubstantial, for the record clearly shows there was abundant evidence to establish that the machinery was of the value found by the court.

The evidence establishes the fact that, beginning about the end of the year 1903, the appellant began removing these mills from the Calamba estates and storing the machinery in the company camarin in town, and continued this work of removing them until all were taken away some time in the year 1906 (R., pp. 51, 52, 67.) It is not controverted that the machinery which was examined and appraised by the witnesses for the appellee is the same machinery which was a part of the mills in controversy. The inventory made by the witness Waet, who examined the machinery (R., pp. 29, 30, 31), shows various parts of the machinery stored in the company camarin. It also shows certain parts of the machinery which had been placed nearby, but not stored in the company camarin. (R., p. 31.) The testimony of Thomas Taylor (R., pp. 60, 61) clearly establishes the value of the machinery in controversy. Mr. Taylor, a mechanical engineer of many years' standing, who had pursued his studies of mechanical engineering in sugar

machine works in Glasgow, Scotland, and who, at the time he testified, had a machine shop, testified that he examined each piece of the mill machinery in the camarin where it had been stored, and that, in his opinion, the machinery so examined by him was then worth fifty thousand pesos. Had it been new, its value would have been one hundred thousand pesos (R., pp. 60, 61). It is observed that the testimony as to the value of the property taken relates only to the mill machinery stored in the camarin in town, and does not refer to other machinery which the plaintiff in error had taken from the Calamba estates and put near the camarin.

That the plaintiff in error considered this machinery exceedingly valuable is evidenced by the fact that it removed the machinery from the estates for its own purposes, and in so doing necessarily incurred a large expense, as the persons employed were engaged in this work covering a period of nearly three years.

Upon consideration of the evidence, the court found, as a fact, that the machinery which the appellant removed from the estate and stored in the camarin in town was of the value of fifty thousand pesos (R., p. 125).

The finding by the court below of the value of the machinery so removed will not be reconsidered by this court.

In *Gauzon* v. *Compania General De Tabacos De Filipinas, supra,* having under review a judgment of

the Supreme Court of the Philippine Islands, this court said:

> "The writ of error was the proper method by which to review the judgment of the Supreme Court of the Philippines. *Carino* v. *Philippine Islands*, 212 U. S. 449, 53 L. ed. 594, 29 Sup. Ct. Rep. 334; *Tiglao* v. *Philippine Islands*, 215 U. S. 410, 54 L. ed. 257, 30 Sup. Ct. Rep. 129; *Jover y Costos* v. *Philippine Islands*, 221 U. S. 623, 55 L. ed. 884, 31 Sup. Ct. Rep. 664. The case being properly here upon writ of error, the appeal must be dismissed. Upon such writ, the case having been decided upon issues of fact, this court will not reconsider the conclusions of the lower court, which finds support in the record, in reaching its judgment."

The remaining assignments of error are too unimportant to merit discussion.

CONCLUSION.

The judgment of the Supreme Court of the Philippine Islands should be affirmed with costs.

Respectfully submitted,

SAMUEL T. ANSELL,
EDWARD S. BAILEY,
Attorneys for Defendant in Error and Appellee.

In the Supreme Court of the United States.

OCTOBER TERM, 1916.

THE PHILIPPINES SUGAR ESTATES DEVELOPMENT COMPANY, LTD., *Plaintiff in Error and Appellant,*

v.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS.

No. 521.

In Error to and Appeal from the Supreme Court of the Philippine Islands.

MOTION BY THE GOVERNMENT OF THE PHILIPPINE ISLANDS TO DISMISS.

Comes now the defendant in error and appellee and moves the Court to dismiss this writ of error and appeal, as, for the reasons stated in the accompanying brief, this Court has no jurisdiction thereof.

SAMUEL T. ANSELL,

Counsel for defendant in error and appellee.

NOTICE OF SUBMISSION OF ABOVE MOTION.

To

ANTONIO M. OPISSO, Esq.,
Counsel for plaintiff in error and appellant,
Post Office Box 872, Manila, P. I.

PLEASE TAKE NOTICE that on Monday, the 23d day of April, 1917, at the opening of the Court, or as soon thereafter as counsel can be heard, the motion of which the foregoing is a copy will be submitted to the Supreme Court of the United States for the decision of the said Court thereon.

Annexed hereto is a copy of the brief of argument to be submitted with said motion in support thereof.

SAMUEL T. ANSELL,
Counsel for defendant in error and appellee.

February 15, 1917.

BRIEF OF THE DEFENDANT IN ERROR AND APPELLEE IN SUPPORT OF THE ABOVE MOTION.

STATEMENT OF THE CASE.

On the basis of jurisdictional amount, this case is here on writ of error to and appeal from the Supreme Court of the Philippine Islands for the review of what we deny to be a final judgment of that Court.

On December 22, 1903, the Philippines Sugar Estates Development Company, Ltd. (a corporation),

by written contract agreed to sell to the Government of the Philippine Islands eight *haciendas*, formerly the property of the Dominican Order of Friars in the Philippines, together with "all warehouses, camarines and other buildings, dams, tunnels, ditches *and other improvements*" (R., 5), and "all improvements, together with all water and other rights and all hereditaments belonging to the company on every part of the estates agreed to be conveyed."

On October 19, 1905, in partial compliance with said agreement the Development Company executed a deed of sale of the Calamba estate, one of the *haciendas* named in that agreement. In the description of the buildings and improvements affixed to the lands of this estate, and conveyed therewith, the deed recites the names and descriptions of several sugar mills which are inventoried as being located on the *hacienda* (R., 10).

The first signatory of this deed is *Fray Lucio Asenico, Provincial Vicar*, after which follows the signature of the Development Company by its general manager who has subscribed as "holding special power of attorney" (R., 13). The penultimate paragraph of this deed is as follows (R., 12):

> "In turn I, the Very Reverend Father Fray Lucio Asenico Pascual, as Provincial Vicar of the Dominican Order or Order of Preachers of these Islands, that is to say, the Province

of the Most Holy Rosary of the Philippines, and as the head of the Convent of Saint Dominic of Manila, by virtue of the powers and authority vested in me in accordance with the substitution of a power of attorney to me executed on the eighth day of July, 1901, by the Very Reverend Father Provincial Fray Santiago Paya, do become party to the execution of this instrument and solemnly bind the religious corporation by me duly and fully represented, to respond as surety for the performance of each and all of the obligations contracted in these presents by the corporation, 'the Philippines Sugar Estates Development Company, Limited,' responding severally and jointly with the said corporation for the prompt and complete performance of said obligations and *for the payment of damages* arising to the Government of the Philippine Islands through breach of the same, and jointly with the vendor to warrant the title of the said Government of the Philippine Islands, or of its successors in interest, to the property by these presents conveyed."

After the celebration of the preliminary contract, and both before and after the execution of the deed of sale just mentioned, the Development Company severed, took apart, and removed certain sugar mills, claimed by the Government to have been conveyed in the deed of sale, and a railroad affixed to the estate in question (R., 3, 120).

The Philippine Government promptly brought suit against the "Philippines Sugar Estates Development Company, Ltd., *and the Orden de Dominicos* or *Padres Predicadores,*" otherwise known as *Provincia del Santisimo Rosario de Filipinas* (R., 1), setting up the deed of sale and the contract, reciting the unauthorized removal of the demised fixtures, alleging a damage of fifty thousand pesos (P.50,000.00) occasioned thereby, and prayed a joint and several judgment against the co-defendants in the amount of the alleged damage with interest and costs (R., 4). Summons was served upon both defendants on October 16, 1906 (R., 14). Defendants filed an answer and two supplemental answers (R., 17, 19, 21), denying that it was the effect of the transactions to convey the structures which defendants had removed. The parties having come to an issue after considerable procedural activity, the cause came on for trial before the Court of First Instance of Manila, and on February 15, 1912, that Court rendered the following judgment (R., 101):

> "*The Philippines Sugar Estates Development Company, Ltd.*, is acquitted from the complaint *without any express ruling on the costs.*"

It is thus seen that no judgment was rendered as to the co-defendant, the Dominican Order, nor was there any ruling as to costs. Plaintiff excepted and

asked for a new trial (R., 102). Overruled (R., 103). Plaintiff filed a bill of exceptions (R., 104) and appealed the judgment to the Supreme Court of the Philippines. The allowance of appeal does not appear of record, but the bill of exceptions names both of co-defendants (R., 104).

From this time on we hear no more of the Dominican Order.

It is impossible to say from the record what judgment was rendered in the Supreme Court of the Philippines. There is one opinion captioned "Moreland, J." At the close of this opinion appear these words (R., 125):

> "The judgment is reversed and the cause remanded to the Court of First Instance with instructions to enter judgment in favor of the plaintiff and against the defendant (not defend*ants*) in the sum of fifty thousand pesos (P.50,000.00), with interest from the commencement of the action. After the expiration of twenty days, let judgment be entered in accordance herewith, and ten days thereafter, let the case be returned to the Court whence it came for execution. So ordered."

This ostensible order is not signed nor authenticated in any manner. Immediately following it is a caption, "Concurring opinion, Carson, J.," followed by an unsigned and unauthenticated legal opinion without any judicial order. Then follows (R., 126) an opinion captioned, "Dissenting opinion;

Arelano, C. J., dissenting." At the close of this opinion appears the following separate paragraph (R., 132):

> *"The judgment appealed from is affirmed with costs."*

It is signed "C. S. Arelano." After a motion for rehearing by the Development Company alone, and the adverse resolution of the Court (R., 135) appears an exception taken by the Development Company alone. Next appears an entry of the Clerk of the Supreme Court in the following terms (R., 136):

> "JUDGMENT.
>
> *"April 8, 1915.*
>
> "The Court having regularly acquired jurisdiction in the above entitled cause, submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the fourth day of March, A. D. 1915.
>
> "By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the eighth day of February, 1912, and from which the above-entitled appeal was taken, be and the same is hereby received (?), and let the case be returned to the Court of First Instance with instructions to render judgment in favor of plaintiff and against defend*ant* (not

defend*ants*) for the sum of P.50,000.00, with interest from the date the action was filed.

"It is further ordered that ——— recover from ——— the sum of P. ——— as costs.

"(Sgd.) V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands."

The Development Company alone sued out a writ of error (R., 137) and an appeal (R., 143), and it clearly appears on the record that (whatever may be the status of this cause as to the Development Company) as to the co-defendant, the Dominican Order (against whom the prayer was made in the Court of First Instance of Manila and in the Supreme Court of the Philippines), this case is still pending in the courts below.

ARGUMENT.

The Record Contains No Final Judgment.

1. *The record discloses no judgment at all.*

The following are the laws governing the rendition of judgments in the Philippine Islands (Compilation of Acts of the Philippine Commission, 1908):

Section 2175:

> "In the determination of all causes, all decisions of the Supreme Court shall be given in writing, signed by the judges concurring in the decision, * * *."

Section 2169:

> "The Supreme Court shall consist of a Chief Justice and six Associate Justices, any five of whom, when convened, shall form a quorum, and may transact any of the business of the Court; but in the absence of a quorum the members or member present may adjourn the court from time to time with the same effect as if all were present. *The concurrence of at least four members of the Court shall be necessary to pronounce a judgment.* * * *"

The record discloses only one signature of a judge of the Supreme Court of the Philippines and that is the signature of the Chief Justice to what is, in form, a judgment in favor of and not against plaintiff in error.

The record discloses, by signature, the presence of only one judge and nowhere in the record is there even a suggestion that more than three judges partook in the determination of this case. The only order for judgment against the plaintiff in error is defective in that it is unsigned. Nowhere in the record does it appear that there was a quorum of the Court, or that four judges concurred in any decision or judgment, or that any judgment or order for judgment against the plaintiff in error was rendered and signed by any judge. A judgment not so authenticated should not be regarded as a final judgment for appellate purposes.

Cf. *Insurance Company* v. *Wilson*, 8 Pet. 290, 303; *Del Valle* v. *Harrison*, 93 U. S. 233. The record must show the rendition and entry in the lower court of an appealable judgment. *Missouri, etc. R. R. Co.* v. *Olathe*, 222 U. S. 185; *Clark* v. *McDade*, 165 U. S. 168; *Herrick* v. *Cutcheon*, 55 Fed. 6.

In this case there is a deficient basis of review not only because of an absence of authenticated judgment but all the more so because the record shows definitive judicial expressions and formularies that are in such absolute conflict as to raise the doubt here whether the Court, as such, ever rendered any final judgment.

2. *Even if the defective record be taken as importing a judgment in favor of the Philippine Government, the judgment is not final on other grounds.*

(a) *The case is still pending in the Courts below as to one of the parties to the suit, the Dominican Order.*

The suit in this case was brought by the Philippine Government on a joint and several obligation against the Philippines Sugar Estates Development Company and the Dominican Order of Friars. The record shows that no judgment has ever been rendered in the Court of First Instance of Manila against the Dominican Order, and, although both the Development Company and the Dominican Order were named in the appeal to the Supreme Court of the Philippine Islands, that Court, in rendering judgment against the Development Company, rendered no

judgment against the corporation of friars. It is well settled that a judgment against only one of co-defendants is not appealable to this Court as a final judgment. *United States* v. *Girault*, 11 Howard 21, 32; *Hohorst* v. *Hamburg American Packet Co.*, 148 U. S. 262; *In re Atlantic City R. R. Co.*, 164 U. S. 635; *In re Pollitz*, 206 U. S. 332; *Meagher* v. *Minnesota Thresher Manufacturing Co.*, 145 U. S. 608, 611; *Bank of Roundout* v. *Smith*, 156 U. S. 330, 333; *Ex parte National, etc. Co.*, 201 U. S. 156, 165; *Baker* v. *National Bank*, 91 Fed. 450; *Carmichael* v. *Texarkana*, 116 Fed. 847, 848; *General Electric Co.* v. *Allis-Chalmers Co.*, 194 Fed. 413, 414; *Cay* v. *Vereen*, 144 Fed. 839; *Menge* v. *Warringer*, 120 Fed. 817.

(b) *The case is still pending in the courts below as to the question of costs.*

By the Philippine Code of Civil Procedure costs in actions at law do not of necessity follow a judgment for the prevailing party. Section 2919, Compiled Acts, Philippine Commission (1908), Section 487, Code of Civil Procedure:

> "Costs shall ordinarily be allowed to the prevailing party as a matter of course, but the Court shall have power, for specific reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided as may be equitable."

The award of costs is thus seen to be discretionary. No decree is final if anything is left to be done below which involves the exercise of judicial (rather than of ministerial) power. *Hughes Federal Procedure*, page 496; *Guarantee Co.* v. *Mechanics Bank*, 173 U. S. 582, 586; *Beebe* v. *Russell*, 19 How. 283, 285; *Damese* v. *Kendall*, 119 U. S. 53, 54; and a decree or affirmance without the taxation of costs is not to be regarded as a final decree. *Wheeler* v. *Harris*, 80 U. S. 56; *Norton* v. *Hood*, 12 Fed. 763; *Dickenson* v. *Codwise*, 11 Paige (N. Y.) 189; *Chittenden* v. *M. E. Church*, 8 How. Prac. 327; *Ex Parte Norton*, 108 U. S. 237, 27 L. Ed. 709; *McMahon* v. *Harrison*, 5 How. Prac. 360; *Bolles* v. *Stockman*, 42 Ohio State 445; *Mielke* v. *Nelson*, 83 N. W. 836. *A fortiori* is this rule conclusive where one of the parties is the State and the ruling as to costs has been especially reserved in the judgment of the court of first instance, and where the judgment of the highest court leaves the amount and the name of the recipient of the award of costs blank. In such a case the award of costs in favor of or against the government depends on the court's determination of a serious legal question; that is, whether the State (against which costs are generally held inadmissible) may yet recover costs on the reversal of a judgment against it, which judgment expressly reserved the ruling as to costs. The question as to whether costs may be recovered against

the *quasi* sovereignty of the Philippine Islands has never been determined by the Courts. The correlative question as to whether that *quasi* sovereignty may recover costs on the reversal of a judgment against it has likewise not yet been addressed. The complaint against the co-defendants in this case prayed the assessment of costs. Thus it appears that serious legal questions and substantial rights of the parties touching the taxation of costs remain pending in the courts below.

CONCLUSION.

The record does not disclose any final judgment in the court below. This Court is, therefore, without jurisdiction in this case, and for that reason both the appeal and the writ of error must be dismissed.

SAMUEL T. ANSELL,

Counsel for the Government of the Philippine Islands.

No. 521.

OCTOBER TERM, 1916.

IN THE

SUPREME COURT OF THE UNITED STATES

PHILIPPINES SUGAR ESTATES DEVELOPMENT COMPANY, Ltd.,
Plaintiff in error and Appellant.

vs.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS.
Defendant in error and Appellee.

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

MOTION BY PLAINTIFF IN ERROR AND APPELLANT, TO AMEND THE TRANSCRIPT OF THE RECORD.

Comes now plaintiff in error and appellant and asks leave of this Court to amend the transcript of the record in the above-entitled cause by adding the words "Torres, J. and Johnson, J., concurred"

at line 34 of page 125 of the printed copy thereof, after the words "so ordered" and before the words "concurring opinion," found at line 35 of the same.

This motion is based on the fact that although said words are to be found in, and are and have always been a part of the original decision of the Supreme Court of the Philippine Islands in the above entitled case and were part of said decision at the time the same was rendered on the 4th day of March, A. D. 1915, yet, they were inadvertently overlooked and omitted by the Clerk of said Court in preparing the transcript of the record in pursuance of the writ of error sued out and the appeal taken by plaintiff in error and appellant, and said omission and defect in said transcript of the record did not become known or apparent until the printed copy thereof was received by the undersigned counsel for plaintiff in error and appellant, as it all appears from the certificate of the Clerk of the Supreme Court of the Philippine Islands, which is attached hereto and made part hereof.

In support of this motion, counsel for plaintiff in error and appellant begs to refer to the following authorities, to-wit:

Crandalls vs. Nevada, 6 Wall. 35, where it was decided that the clerk may supply a deficiency in the record by the subsequent sending up of the omitted matter without any further order of the Court.

Woodward vs. Brown, 13 Pet. 1, where it can be seen that where by misprison of the Clerk of the Circuit Court, the judgment in a case brought up by writ of error had not been entered according to

the declaration, the Supreme Court allowed an amendment to be made to the entry of the judgment, without awarding a certiorari to the Circuit Court.

And also:

Stitt *vs.* Huidekoper, 17 Wall. 31;
U. S. *vs.* Davenport's Heirs, 142 U. S. 704.

Respectfully submitted,

ANTONIO M. OPISSO,
Counsel for Plaintiff in Error and Appellant.

April 26th, 1917.

NOTICE OF SUBMISSION OF THE ABOVE MOTION.

To

Samuel T. Ansell,
Counsel for Defendant in Error and Appellee,
Judge Advocate's Office,
Bureau of Insular Affairs,
War Department,
Washington, D. C.

Please take notice that on Monday, the 30th day of April 1917, at the opening of the Court, or as soon thereafter as counsel can be heard, the motion of which the foregoing is a copy will be submitted to the Supreme Court of the United States for the decision of said Court thereon.

ANTONIO M. OPISSO,
Counsel for Plaintiff in Error and Appellant.

April 26th, 1917.

THE UNITED STATES OF AMERICA.

PHILIPPINE ISLANDS.

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

R. G. No. 7992.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, *Plaintiff and Appellant,*

versus

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT CO. Ltd., and Others, *Defendants and Appellees.*

MORELAND, J.:

This is an action begun by the Government of the Philippine Islands against the Philippine Sugar Estates Development Company, Limited, and the Order of the Dominicans to recover the sum of P50,000.00, the value of a railroad and various sugar mills which, according to the complaint,

formed a part of the real estate, consisting of a certain hacienda, sold by the defendants to the plaintiff and which, after such sale, were illegally removed from said hacienda by the defendants and converted to their own use.

The defendants answered the complaint admitting the sale of the hacienda, also substantially admitting the removal of the railroad and sugar mills, but denied that the latter were included in the hacienda the sale of which is the basis of the action.

As a special defense the defendants alleged "that on the execution of the conveyance to the Insular Government, which is annexed to plaintiff's complaint and marked Exhibit 'B', it was understood by the parties to the conveyance that such conveyance did not include the same railroad or sugar mill and their accessories, for which suit has been brought, and although such conveyance contains the words 'and all other improvements and accessories at the present time on said hacienda' as having been included in the sale, it was understood by the parties that the said railroad and sugar mills and accessories were not included in that general description, nor was it the intention of the parties to include them, 'and for this reason the defendants impugn the contract annexed to the complaint in so far as it may be construed in a sense contrary to this position, on the ground that it does not express the real intention of the parties."

The plaintiff demurred to the portion of the answer above quoted upon the ground that it was not a defense, "as the evidence which would have

to be offered in support thereof was incompetent, irrelevant and immaterial in that such evidence, if offered, would be parol evidence and would vary the terms of a written instrument." The demurrer was overruled and the cause went to trial. The court found in favor of the defendants, dismissing the complaint on the merits. This appeal is from that judgment.

The question before us for decision is whether the conveyance from the defendants to the plaintiff includes, as matter of law, the railroad and the sugar mills, with their accessories, the subject of this dispute, and whether in case they are included in the conveyance, parol evidence is admissible to exclude them.

On the 22nd day of December, 1903, the parties of this action entered into a contract for the sale of certain lands and premises therein described, among others, lands known as the Calamba Sugar Estate. In that contract appears the following:

> "This sale and conveyance shall include all the dwelling-houses, farm-houses, ware-houses, camarines and other buildings, irrigation works, dams, tunnels, ditches, and all other improvements, together with all water and other rights of hereditament belonging to the company on every part of the estates hereby agreed to be conveyed."

In the final conveyance, made in pursuance of this contract and which is the basis of this action, the following clause appears relative to the Calamba hacienda:

"And, furthermore, I declare that there is included in this sale and is hereby ceded and conveyed to the Government of these Islands, all the rights and interests which the company which I represent has or may legally exercise in the buildings, irrigation works, water rights, improved lands, and all other improvements and accesories, which exist in the hacienda or lands sold and conveyed by this instrument."

We held in the case of Fernandez *vs.* Shearer, 19 Phil. Rep. 75, that sugar mills constitute an improvement of the lands upon which they are built and are subject to taxation as real estate. We also held in the case of Bischoff *vs.* Pomar, etc. 12 Phil. Rep. 690, that a mortgage given on real estate includes and constitutes a lien upon sugar mills and other improvements affixed to and forming part of the land at the time the mortgage was given.

Under these holdings, the sale of the land would carry with it, without further words, all the improvements existing thereon at the time of the sale and forming part thereof. Certainly such improvements, whether railroad or sugar mills, would be included in the phrase "all other improvements and accesories."

Section 285 of the Code of Civil Procedure is as follows:

"Written agreement presumed to contain all the terms of the agreement. When the terms of an agreement have been reduced to

writing by the parties, it is to be considered as containing all those terms, and therefore, there can be, between the parties and their representatives or succesors in interest, no evidence of the terms of agreement other than the contents of the writing, except in the following cases:

"(*a*) Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, is put in issue by the pleadings;

"(*b*) Where the validity of the agreement is the fact in dispute; but this section does not exclude other evidence of the circumstances under which the agreement was made, or to which it relates, or to explain an intrinsic ambiguity, or to establish its illegality or fraud. The term 'agreement' includes deeds and instruments conveying real estate, and wills as well as contracts between parties."

It is contended that parol evidence is admissible in the case at bar to show that it was understood between the parties at the time the sale was made that neither the sale of the real estate itself nor the additional words "all other improvements and accessories" were intended to include the railroad and the sugar mills,—indeed, that it was expressly agreed at the time the conveyance was executed that they should be excluded. The authority for this contention is to be found, it is alleged, in that part of paragraph 1 of the section just quoted which makes an exception to the general rule that parol evidence cannot be introduced to contradict or vary the terms of a written instrument, and per-

mits its introduction when the writing "fails to express the true intent and agreement of the parties," which failure "is put in issue by the pleadings." The defendants claim that, if the sale of the real estate, without further words, or if the words "all other improvements and accessories" are held, as matter of law, to include the railroad and sugar mills then on the land and forming part thereof, then the agreement "fails to express the true intent and agreement of the parties," and that accordingly, authority is found in the section referred for the introduction of parol evidence showing what the true agreement of the parties was.

We regard this contention as too broad. We do not believe it to have been the intention of the legislature to authorize the introduction of parol evidence respecting the terms of a written instrument under the circumstances set forth in the contention. Such a theory would prevent written instruments, to a considerable extent, from serving the purpose they were designed to serve and would leave them of little more value than parol agreements. If, against the objection of the vendee, properly interposed, one may, in the absence of fraud and mistake, successfully maintain, after he has executed a conveyance of real estate, that he intended, and it was verbally agreed that certain buildings on the premises, forming part of the free-hold, should be excepted or reserved from the operation of the conveyance, or that only half of the premises described in the conveyance were excepted from the terms of the conveyance, and thereby materially modify the meaning and effect of the document, written instru-

ments cease to have substantial value as such (Jones, Commentaries on Evidence (Horwitz) 485, 486, Vol. 3; Yu Tek & Co. *vs.* Gonzalez, 13 Off. Gaz. 372).

Under our Code of Civil Procedure parol evidence may be introduced to relieve from an imperfection or to correct a mistake which has prevented any real agreement from being reached, or which has occasioned the expression of that which was not the true agreement; or to attack the validity of the agreement, and for the other purposes named in the second paragraph of section 285. Where there is an imperfection or mistake in an instrument, it either does not express any agreement at all between the parties or it does not express their real agreement. Where there is no mistake or imperfection, it expresses both; and the reference in paragraph 1 of said section to the failure of the instrument "to express the true intent and agreement of the parties" refers to a mistake or imperfection by which the failure is produced.

In many cases, mistake, as such, has no legal effect. It neither adds anything to nor takes anything from the legal consequence of an act, either as regards the right of other persons or the liability of the persons performing the act. Nor does mistake of itself necessarily affect the validity of contracts. A mistake, as we have already said, may prevent any real agreement from being reached or may occasion the expression of that which was not the true agreement; but if the minds of the parties actually met on all the essentials of a contract, and the instrument which purports to evidence it is in

fact a true exposition of that contract, no amount of mistake in respect to the legal effect of the contract will induce a court, either of law or equity, to interfere. Courts, in exercising the powers of recision and reformation, do not operate upon contracts at all but merely upon what erroneously purport to be contracts. Courts will not reform a writing so as to give an agreement a different effect from that which the parties intentionally entered into simply because the contract as executed does not effect the purpose of its execution, nor insert in the instrument a part of an antecedent verbal agreement which was designedly left out of the written contract, either through ignorance of the necessity for its insertion, or because its performance was trusted to the honor of the defendant. The inquiry is not what contract the parties intended to enter into, but what is the contract they did enter into. Their intention may have been one thing, their agreement quite another. For the same reason a court of equity will not rescind a contract or reform an instrument merely because the parties may have been mistaken as to its legal interpretation and effect, nor will such a mistake be recognized as any defense to a suit upon the contract or instrument. The section under discussion cannot be construed to mean that a party may contradict or modify the terms of a written agreement which he voluntarily signed with full knowledge of its provisions.

As we have intimated, however, there are mistakes that are referred to in Sec. 285,—a mistake or imperfection. Such a mistake is one which prevents any contract actually entered into from be-

ing properly expressed. Where the instrument contains what the parties intended it should and understood that it did, it is presumed to express their intention. At least parol evidence will not be admitted to contradict or vary the terms of the instrument under such circumstances.

The only uses to which parol evidence may be put with respect to a written instrument, aside from the cases referred to, are those mentioned in the second paragraph of section 285. In the case before us it is not alleged that there was a mistake of the parties in the formulation of the conveyance or that the conveyance is imperfect, invalid or ambiguous. It is claimed, simply, that the vendors did not understand that the conveyance itself and the words used therein meant what in law they mean, and, therefore, ask that they be permitted to contradict or vary their plain meaning and effect by showing, by parol evidence, that they did not include the particular improvements which are the subject-matter of this suit. We do not believe that parol evidence is admissible under such circumstances.

We do not discuss the general rule relative to the admissibility of parol evidence in connection with written instruments, or the varied exceptions to that rule, as laid down by the courts of the United States. It is unnecessary here. The statute, with reasonable clearness, states the rule and gives the exceptions. It is not our province to do more than apply it.

In the case of Pastor *vs.* Caspar, 2 Phil. Rep. 592, the court said, page 599:

"(2) The parties made a verbal agreement which they afterwards reduced to writing. Section 285 of the Code of Civil Procedure prohibits any parol evidence as to other terms not contained in the writing. Under this section, even if there have been agreements other than those contained in the instrument and inconsistent therewith, the plaintiff could not testify to them. The plaintiff claims that this section does not prohibit evidence as to the surrounding circumstances. This is true, and the plaintiff was at the trial allowed to testify that he bought the lorchas himself in Iloilo; that he was paid $500.00 for so doing; that $20,000.00 was borrowed from the Banco Espanol Filipino for the purpose of paying for them; and as to other details. There was no intrinsic ambiguity in the contract which required explanation. When a written contract is vague and indefinite, it can be explained by showing what the surrounding circumstances were (sec. 289), but not showing by parol what the prior agreement in fact was."

(See also Icaza *vs.* Ortega, 5 Phil. Rep. 166; Sanz *vs.* Lavin Brothers, 6 Phil. Rep. 299; Testagorda *vs.* Commanding General, 6 Phil. Rep. 573; Muguruza *vs.* International Bank, 10 Phil. Rep. 346; De Guzman *vs.* Balarag, 11 Phil. Rep. 503; U. S. *vs.* Macaspac, 12 Phil. Rep. 26; Jose *vs.* Damian, 14 Phil. Rep. 104; Sy Joc Lieng *vs.* Sy Quia, 16 Phil. Rep. 137; Lozano *vs.* Tan Suico, 23 Phil. Rep. 16.)

The evidence offered on the trial to sustain the special defense should have been excluded under the objection of the plaintiff.

Evidence was introduced by the parties showing the value of the property removed by the defendant from the premises after the sale to the plaintiff. That evidence fully supports the contention of the appellant that the value was that alleged in the complaint, *vs.* P-50,000.00. In the case of Hicks *vs.* Manila Hotel Co., Vol. 12, Off. Gaz. 2253, we said:

> "It is the practice of this court, in case of reversal of a judgment dismissing the complaint on the merits, to examine the evidence and enter or order entered the judgment which the inferior court should have rendered; and, where the action is for a sum of money or damages, to find from the evidence the amount due or the damages suffered and to render or order the trial court to render judgment for that amount."

The question of damages and the amount thereof were fully ventilated in the trial court and here. We are, therefore, of the opinion that the case should be finally determined in this court.

The judgment is reversed and the cause remanded to the court of First Insurance with instructions to enter judgment in favor of the plaintiff and against the defendant in the sum of fifty thousand pesos (P-50,000.00), with interest from the commencement of the action.

After the expiration of 20 days let judgment be entered in accordance herewith, and 10 days thereafter let the case be returned to the court whence it came for execution. So ordered.

TORRES, J., and JOHNSON, J., concurred.

THE UNITED STATES OF AMERICA.

PHILIPPINE ISLANDS.

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
Plaintiff and Appellant,

versus

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, et al.,
Defendant and Appellees.

R. G. No. 7992.

I, V. ALBERT, Clerk of the Supreme Court of the Philippine Islands, hereby CERTIFY:

That the foregoing is the true and correct copy of the decision rendered by the Supreme Court of the Philippine Islands in the above-entitled case, such as the same was entered in the record of this case on the 4th day of March, A. D. 1915.

That, in preparing the transcript of the record in the above-entitled case in pursuance of the ap-

peal and writ of error taken by the defendant and appellee, to-wit: The Philippine Sugar Estates Development Company, Limited, to the Supreme Court of the United States of America against the said decision and judgment rendered in accordance thereto, through an oversight and inadvertence, the words "TORRES, J. AND JOHNSON, J., CONCURRED." were omitted from the said transcript. That said words were part of said decision and said Torres, J. and Johnson, J. concurred in the rendition of the said decision and signed the same on the same date, the same was rendered, to-wit, on the 4th day of March, A. D. 1915.

That only upon receiving the printed copy of the transcript of the record in the appeal before the Supreme Court of the United States the omission of the said words "TORRES, J. AND JOHNSON, J. CONCURRED," was noted, and thereupon the attorney for the appellant and plaintiff in error in said appeal and writ of error requested the undersigned to rectify said omission by issuing a true and correct copy of the decision rendered by the Supreme Court of the Philippine Islands in the above-entitled case.

In witness whereof, I sign these presents with my signature and affix the seal of this Supreme Court on this 28th day of February, A. D. 1917.

V. ALBERT,
Clerk of the Supreme Court
ar. *of the Philippine Islands.*

[SEAL.]

(CORTE SUPREMA.
ISLAS FILIPINAS.)

PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, *v.* GOVERNMENT OF THE PHILIPPINE ISLANDS.

ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 189. Argued March 13, 1918.—Decided June 3, 1918.

Where, owing to a mutual mistake, a written contract fails to express the intention of the parties, it may be reformed to express their true intention, although the mistake was one of law respecting its interpretation and construction.

Reformation will be granted only where the evidence of mistake is clear and satisfactory.

Relief in such cases may be obtained by a defendant under Philippine Code of Civil Procedure, § 285, upon appropriate pleadings, without resort to an independent suit for reformation of the contract.

In this case it is established by proof of the clearest and most satisfactory character that certain rails and sugar-mill machinery were intended not to go with a sale and conveyance of land to the Philippine Government, and that the failure of the written contract and deed to except them was due to a mutual mistake of law.

The court cannot accept a construction placed upon a Philippine statute by the Supreme Court of the Islands, when it is clearly erroneous.

Upon an appeal from a decree of the Supreme Court of the Philippine Islands erroneously reversing the trial court solely on a question of

law, this court, to dispose finally of the case, may decide the facts, when all evidence proffered was admitted and is in the record, and when the appellant in the court below sought to review the trial court's findings, under § 497, par. 2, of the Philippine Code of Civil Procedure.

Where, in an action at law on a contract, the answer set up was, in effect, a bill in equity, seeking reformation and incidentally to enjoin the action at law, the proceeding was converted into an equitable one, and hence can be reviewed only by appeal and not by writ of error.

30 Phil. Rep. 27, reversed.

THE case is stated in the opinion.

Mr. Antonio M. Opisso for plaintiff in error and appellant.

Mr. Edward S. Bailey, with whom *Mr. Samuel T. Ansell* was on the brief, for defendant in error and appellee.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

When Spain ceded the Philippine Islands to the United States large tracts of agricultural lands were owned by the great religious orders. For political reasons it was deemed advisable that our Government should acquire the Friar lands and sell them to tenants in small holdings on easy terms. Lengthy negotiations conducted to that end by the Civil Governor were concluded in 1903. Most of the lands owned by the Dominicans, amounting to 60,461 hectares, had been conveyed to the Philippine Sugar Estates Development Company, Limited; and with that corporation a contract of sale and purchase was executed by the Government of the Philippine Islands under date of December 22, 1903. The agreement covered eight haciendas including that of Calamba in the

province of Laguna, said to contain 16,424 hectares and 14 ares. Owing to delays incident to resurveys and perfecting of titles, the deed of the Calamba estate was not delivered until October, 1905, when the purchase price, 1,385,443.29 pesos, was paid and possession taken by the grantee.[1] Later the Philippine Government learned that the grantor had removed certain sugar mill machinery and the rails of a light railroad which had formerly been upon the estate. The contract made no mention of sugar mills, machinery, or railroad; but it contained, after the description of the estates and specified properties to be conveyed, the words, "and all other improvements"; and these words were also in the deed. The Government, claiming that the machinery and railroad were covered by this and other clauses and passed as part of the realty, brought suit, in 1906, against the Company[2] in the Court of First Instance of Manila for their value, alleged to be 50,000 pesos.

The Code of Civil Procedure of the Philippine Islands, § 285, permits to be introduced, in case of written contracts, "evidence of the terms of agreement other than the contents of the writing," "where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, is put in issue by the pleadings."[3] The defence was rested, under appropriate

[1] U. S. Philippine Commission Reports (1901), vol. 2, Part 1, p. 24; (1902), Part 1, p. 24; (1903), Part 1, pp. 38–44; (1904), Part 1, p. 16; Part 2, p. 477; (1905), Part 1, p. 65; (1906), Part 1, p. 58. A hectare equals 2.471 acres; two pesos equal one dollar, gold.

[2] The Dominican Order of Friars was joined in the complaint as a party defendant; but it was not mentioned in the judgments entered in either of the lower courts; and it did not become a party to the proceedings in this court.

[3] "*Written Agreement presumed to Contain all the Terms of the Agreement.* When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be, between the parties and their representatives

pleadings, on the ground, among others, that the contracting parties understood that the sugar mills and machinery and the railroad were not to be included as a part of the real estate and that they did not come under any of the terms used in the contract or the deed, and that, for this reason, the instrument did not express the intention and actual agreement of the parties. The trial court held this defence good in law and sustained by the evidence; and entered judgment for the defendant. The Supreme Court of the Philippine Islands reversed the judgment of the trial court solely on the ground that, where parties to a written contract have deliberately adopted the language therein used, a court of equity will not reform the instrument because the parties were "mistaken as to its legal interpretation and effect, nor will such a mistake be recognized as any defense to a suit upon the contract or instrument"; and that relief against such a mistake cannot be afforded under § 285 of the Code. Upon the evidence which had been introduced below the Supreme Court also entered a judgment of 50,000 pesos for the Government. (30 Phil. Rep. 27.) The case comes here under § 248 of the Judicial Code.

The case is brought here both by writ of error and by appeal. The complaint set forth a cause of action at law on the contract. The answer was, in effect, a bill in equity for reformation and incidentally to enjoin the

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or successors in interest, no evidence of the terms of agreement other than the contents of the writing, except in the following cases:

"(1) Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, is put in issue by the pleadings;

"(2) Where the validity of the agreement is the fact in dispute. But this section does not exclude other evidence of the circumstances under which the agreement was made, or to which it relates, or to explain an intrinsic ambiguity, or to establish its illegality or fraud. The term 'agreement' includes deeds and instruments conveying real estate, and wills as well as contracts between parties."

action at law. Compare *Bradbury* v. *Higginson*, 167 California, 553. The proceeding became thus an equitable one. See *Surgett* v. *Lapice*, 8 How. 48, 64–65; *Clark* v. *Mosher*, 107 N. Y. 118; *Turner* v. *Johnson*, 29 Ky. Law Rep. 543. The proper method of review by this court is, therefore, by appeal; and the writ of error is dismissed. *Gsell* v. *Insular Collector of Customs*, 239 U. S. 93; *Montelibano y Ramos* v. *La Compania General de Tabacos de Filipinas*, 241 U. S. 455, 461.

It is well settled that courts of equity will reform a written contract where, owing to mutual mistake, the language used therein did not fully or accurately express the agreement and intention of the parties. The fact that interpretation or construction of a contract presents a question of law and that, therefore, the mistake was one of law is not a bar to granting relief. *Snell* v. *Insurance Co.*, 98 U. S. 85, 88–91; *Griswold* v. *Hazard*, 141 U. S. 260, 283–284.[1] This rule of equity was adopted in the Philippine Code without restriction; and the relief is afforded, under appropriate pleadings, without resort to an independent suit for reformation of the contract. The language of § 285 is clearly broad enough to include relief for such mistakes of law; and the earlier decisions of the Supreme Court of the Philippine Islands to which that court refers in its opinion are not inconsistent with this conclusion. Some of them are instances of the futile attempt to vary, supplement, or contradict a written contract by parol evidence. In none of them was evidence offered under appropriate pleadings with a view to reforming the instrument.[2] It is urged that § 285 was

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[1] See also *Stockbridge Iron Co.* v. *Hudson Iron Co.*, 107 Mass. 290, 319, 320; *Maher* v. *Hibernia Insurance Co.*, 67 N. Y. 283, 291; *Wisconsin Marine & Fire Ins. Co. Bank* v. *Mann*, 100 Wis. 596, 617–620.

[2] *Pastor* v. *Gaspar*, 2 Phil. Rep. 592; *Icaza* v. *Ortega*, 5 Phil. Rep. 166; *Sanz* v. *Lavin Brothers*, 6 Phil. Rep. 299; *Testagorda* v. *Commanding General*, 6 Phil. Rep. 573; *Muguruza* v. *International Bank*,

borrowed from § 1856 of the Code of Civil Procedure of California; and that the courts of that State deny relief under circumstances like those here under consideration. No case sustaining this assertion was cited by counsel and none has been found by us. Furthermore the provisions of the two sections differ materially; the significant clause of § 285, namely, "or its failure to express the true intent and agreement of the parties," is not contained in § 1856 of the California Code. It is also urged that, since the construction of § 285 is a matter of purely local concern, we should not disturb the decision of the Supreme Court of the Philippine Islands. This court is always disposed to accept the construction which the highest court of a territory or possession has placed upon a local statute. *Phoenix Ry. Co.* v. *Landis*, 231 U. S. 578. But that disposition may not be yielded to, where the lower court has clearly erred. *Carrington* v. *United States*, 208 U. S. 1. Here, the construction adopted was rested upon a clearly erroneous assumption as to an established rule of equity. The Supreme Court erred in refusing to consider the evidence of mutual mistake; and its judgment must be reversed.

It remains to consider the further proceedings which should be taken. The judgment of the trial court was reversed by the Supreme Court solely on the ground that the defence of mutual mistake relied upon was not good in law; but the case had been taken to that court on a bill of exceptions which contained the whole record in the trial court, including all the evidence introduced; and the refusal of the trial judge to grant a new trial on the ground that the evidence did not justify the findings of the courts had been duly excepted to. This exception

10 Phil. Rep. 346; *DeGuzman* v. *Balarag*, 11 Phil. Rep. 503; *United States* v. *Macaspac*, 12 Phil. Rep. 26; *Jose* v. *Damian*, 14 Phil. Rep. 104; *Sy Joc Lieng* v. *Sy Quia*, 16 Phil. Rep. 137; *Lozano* v. *Tan Suico*, 23 Phil. Rep. 16.

was apparently insisted upon before the Philippine Supreme Court, and the same contention is made by the Government here. Its purpose was obviously to seek a review of those findings under § 497, par. 2, of the Code of Civil Procedure, which provides that where a motion was made in the trial court for a new trial "upon the ground that the evidence was insufficient to justify the decision, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the facts by a preponderance of the evidence, and render such final judgment, as justice and equity may require." We might require that the review of the evidence to which the Government is entitled should be made by that court. But, as the case is here on appeal and all proffered evidence was admitted below and is in the record before us, we may now finally dispose of the case.

The burden of proof resting upon the appellant cannot be satisfied by mere preponderance of the evidence. It is settled that relief by way of reformation will not be granted, unless the proof of mutual mistake be "of the clearest and most satisfactory character." *Snell* v. *Insurance Co.*, 98 U. S. 85, 89–90; *Baltzer* v. *Raleigh & Augusta Railroad*, 115 U. S. 634, 645; *Maxwell Land Grant Case*, 121 U. S. 325, 381; *Simmons Creek Coal Co.* v. *Doran*, 142 U. S. 417, 435; *Campbell* v. *Northwest Eckington Co.*, 229 U. S. 561, 584. The evidence introduced by appellant meets this stringent requirement.

The following, among other, facts were established by uncontradicted evidence: Prior to May, 1903, the sugar mills had been in part destroyed by revolutionists, and the mills and machinery had fallen into disrepair. In that month the Company gave orders to remove the machinery and the rails from the hacienda and store them elsewhere. In October, 1903, the Company contracted to sell all the

machinery and rails to one Rueda. They were not included in the detailed appraisal of the property which the Government caused to be made. Before the contract with the Government was executed all the rails and a part of the machinery had been removed from the hacienda. In the typewritten draft of this contract with the Government which its counsel prepared and which was submitted by Governor Taft to the Company's representative for consideration, it was expressly stated that "sugar and rice mills and machinery" together with "irrigation work, dams, tunnels, ditches, and all other improvements thereon" should be included in the "sale and conveyance." The Company's representative corrected the draft of agreement by striking out with a pen the words "sugar and rice mills and machinery." This correction was acquiesced in by the Government's representatives; and in the final draft of the contract which was executed December 22, 1903, there was no reference to sugar mills, machinery, or tramway, although the paragraph, as modified, contained the following explicit and detailed provision:

"This sale and conveyance shall include all the dwelling houses, farm houses, warehouses, camarines and other buildings, irrigation works, dams, tunnels, ditches, and all other improvements, together with all water and other rights and all hereditaments belonging to the Company on every part of the estates hereby agreed to be conveyed."

The words sugar mills were also included in the draft of the final deed of conveyance, but they were stricken out after a conference between the Company's representative and the Civil Governor, so that the words do not appear in the final deed of conveyance.

This clear and uncontradicted testimony as to the agreement actually made is supported by the production of the original draft of the agreement in which the words

"sugar and rice mills and machinery" were stricken out in ink, and also by production from the files of the Executive Bureau of the stenographic report of the interview with Governor Wright, above referred to. As against this strong evidence the Government can point only to the fact that in the deed, the hacienda is first described as "the description, area and boundaries" thereof "appear in the title deeds," then as it appears from the recent Government surveys; and that in the description according to the title deeds, the several sugar mills are named, and following them is the clause, "though it is believed that these mills were destroyed in part at least, by the revolutionists." This recital, itself of ambiguous import, is of no significance. This description was in no way relied upon by the Supreme Court of the Philippine Islands. Their decision was based entirely upon the alleged inclusion of sugar mills and machinery in the phrase, "improvements and accessories." As found by the trial judge, the evidence "shows, without the slightest doubt, that the parties, on striking out said words [the sugar mills] from the document, agreed not to include them in the sale, as demanded by the representative of the vendor, because they were not legally part of the Hacienda, for the reason that they had already been sold to Enrique Rueda prior to the preliminary agreement."

The judgment entered in the Supreme Court of the Philippine Islands is reversed and that entered by the Court of First Instance of Manila is affirmed.

Reversed.